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961354 FEB 24 1997

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No.

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1996

ROBERT S. CATZ,

Petitioner,

v.

TRIAL COMMISSIONER JOSEPH R. McDONALD, DOMESTIC RELATIONS DIVISION OF THE SUPERIOR COURT IN AND FOR THE COUNTY OF PIMA, ARIZONA, SUSAN R. CHALKER (Real Party of Interest), FIDELITY INVESTMENTS, TEACHERS INSURANCE ANNUITY ASSOCIATION-COLLEGE RETIREMENT EQUITY FUND, AND WATERHOUSE SECURITIES, INC.

Respondents.

Petition for Writ of Certiorari to the Arizona Court of Appeals, Division Two

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10 pp

I. QUESTION PRESENTED

Did the Arizona divorce court deprive petitioner of the fundamental and historic right to defend deeply rooted at common law and in the Due Process Clause of the Fourteenth Amendment to the United States Constitution when it:

> (1) authorized under color of Arizona's Domestic Relations Injunction Act, A.R.S. § 25-315, without *any* bond requirement, the ex parte prejudgment seizure of his property and those of his non-party adult children solely upon the mere filing of one-sided, self-serving and conclusory affidavits claiming exigent circumstances, without *any* probable cause showing and adjudication that the party seizing the property is likely to prevail on the merits by clear and convincing evidence, and without *any* opportunity for a prompt, expeditious and immediate post-seizure hearing of *any* kind to put the party who sought the seizure to her burden of establishing her entitlement to continued relief pending entry of final judgment;
>
> (2) vacated his pro se motion to dismiss the divorce proceeding under Article IV § 1 of the United States Constitution as part of a coercive and grossly excessive default judgment sanction of contempt for his non-willful failure to comply with a court order requiring him to attend a deposition in which he was not provided with *any* prior notice;
>
> (3) conducted an evidentiary hearing and trial on the merits in his absence without *any* prior notice to him

in support of a coerced default judgment imposed as a contempt sanction and entered final judgment which voided a prior Ohio divorce decree on grounds of fraud in clear violation of the Full Faith and Credit Clause, Article IV § 1 of the United States Constitution when it neither considered nor applied the law of the rendering State of Ohio which requires that a party collaterally attacking a final judgment do so by clear and convincing evidence; and

(4) deprived him of *any* opportunity for direct appeal by belatedly returning unfiled, after the time to notice an appeal had expired, his timely pro se motion to alter or amend the final judgment when he attempted to proceed *in forma pauperis* under Boddie v. Connecticut?

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PETITION FOR WRIT OF CERTIORARI TO THE ARIZONA COURT OF APPEALS, DIVISION TWO

Petitioner Robert S. Catz respectfully prays that this Court issue a writ of certiorari to review the final judgment of the Arizona Court of Appeals, Division Two, entered on May 2, 1996. On October 25, 1996 the Arizona Supreme Court denied a timely petition for review.[1]

II. OPINIONS BELOW

The final order of the Arizona Court of Appeals, Division Two, denying petitioner's petition for special action in the nature of mandamus relief is unreported. (App.53) The final order of the Arizona Supreme Court denying petitioner's petition for review is unreported. (App.56) Both orders are reproduced in the Appendix hereto.

III. JURISDICTION

The Arizona Supreme Court entered its final judgment denying petitioner's petition for review on October 25, 1996. On January 10, 1997 Justice O'Connor entered an order extending the time in which to file this petition to and including February 22, 1997. This petition for writ of certiorari is filed within the time allotted by Justice O'Connor's order of January 10, 1997. This Court's jurisdiction is invoked under 28 U.S.C. § 1257.

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[1] **These proceedings call into question the constitutionality of an Arizona statutory scheme, Ariz. Rev. Stat. § 25-315. Pursuant to S.C. Rule 29.4(c), petitioner certifies that he served three copies of this petition on the Attorney General of Arizona as required by 28 U.S.C. 2403(b).**

IV. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment, U.S. Constitution, provides in relevant part:

> No State shall . . .deprive any person of life, liberty, or property, without due process of law; . .

Ariz. Rev. Stat. § 25-315 D & F provide in relevant part:

> D. The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed. No bond shall be required unless the court deems it appropriate
>
> F. A temporary order or preliminary injunction:
>
> 1. Does not prejudice the rights of the parties or any child which are adjudicated at the subsequent hearing the proceeding.
>
> 2. May be revoked or modified before final decree [of dissolution] on a showing by affidavit of the facts necessary to revocation or modification of a final decree under § 25-327 and as provided in Rule 65 of the Rules of Civil Procedure.[2]

V. STATEMENT

Petitioner Robert S. Catz and respondent Susan Chalker were divorced in the Cuyahoga County (Cleveland,

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[2] **The complete text of Ariz.Rev. Stat. § 25-315 is reproduced in the Appendix herein. (App. 58-63)**

Ohio) Court of Common Pleas on April 10, 1989.[3] (App.21)

Without disclosing the existence of the prior Ohio decree, respondent Chalker filed a preemptive divorce action against petitioner Catz in the Pima County (Tucson, Arizona) Superior Court more than five years later on November 4, 1994.[4] Upon the mere filing of the petition for divorce the clerk of the Arizona divorce court automatically executed a mandatory and ministerial preliminary injunction under his signature and seal, without any judicial supervision issued as an order of the court enforceable by contempt and prosecution for the crime of interference with judicial proceedings, which under Ariz. Rev. Stat. § 25-315A (App.24) requires him to issue in every divorce action without prior notice, probable cause, an opportunity for some kind of hearing or a bond. The injunction provide that "petitioner and respondent named above, as parties to the action, are enjoined from and shall not: (a) Transfer, encumber, conceal, sell or otherwise dispose of any of the joint, common or community party of the parties, except in the usual course of business or for necessities of life, without the written consent of both parties or permission of the court". (App.24-25)

In addition to the November 4, 1994 mandatory preliminary injunction issued by the clerk, on December 1, 1994, respondent Chalker also filed an ex parte motion for a temporary restraining order without notice (R.84).[5] On the same day, the chief judge of the divorce court issued an ex

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[3] **Catz v. Catz, No. D190173(C.P. Cuyahoga Cty., Ohio)**

[4] **Chalker v. Catz, No. 10365 (Super. Ct. Pima Cty. , Ariz.)**

[5] **"(R. __)" refers to the Petitioner's Documentary Record Appendix filed with the Arizona Court of Appeals.**

parte "Temporary Restraining Order Without Notice" (App.26) sequestering assets held in trust for petitioner and his non-party adult children[6] by stakeholder respondents Fidelity Investments, Teachers Insurance Annuity Association/College Retirement Equity Fund, and Waterhouse Securities. The order issued without a court reporter present.

The chief judge of the divorce court issued the ex parte temporary restraining order without any prior notice, as expressly authorized by Ariz. Rev. Stat. § 25-315 D and F, without requiring any posting of bond or security to protect against the erroneous deprivation of property. Neither the temporary restraining order nor the Arizona statute make any provision for a probable cause showing

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[6]The non-party adult children from a previous marriage, Tennessee residents, were never named as parties or served with any legal process, the temporary restraining order, or any other pleadings filed in the divorce action in violation of the constitutional notice requirements of Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 680 (1950) and Shaffer v. Heitner, 433 U.S. 186(1977). (App. 26-28) The state court record reflects that stakeholder respondent Fidelity Investments has refused, because of the notice and service defects, to turnover the sequestered assets belonging to petitioner's non-party adult children to respondent Chalker. Nonetheless, the sequestered assets have now been beyond their reach for more than two years without some kind of hearing. The ex parte temporary restraining order provides that the injunction shall be served" forthwith." (App.28). The record reflects that respondent Fidelity Investments, TIAA-CREF and Waterhouse Securities were served the next day with the temporary restraining order specifically naming and joining them as co-defendants. The state court record also establishes a willful violation of the December 1, 1994 order, in that respondent Chalker's divorce lawyers deliberately waited more than a week until December 8, 1994 before even providing a copy of the ex parte "Temporary Restraining Order Without Notice" to their designated private process server appointed by respondent Chalker to serve petitioner. (R.144).

that respondent is likely to prevail on her claim, nor does it require any kind of immediate, expeditious or prompt post-seizure hearing nor does it require the posting of security or bond. The extra-territorial ex parte temporary restraining order issued without notice under Ariz.Rev.Stat. § 25-315 specifically provides that petitioner is "enjoined and prohibited from payment, withdrawal and/or disbursement whatsoever, of any funds, stocks, bonds, notes or other property, however it may be denominated and where, which may be in his possession and or control in the names of Robert Steven Catz" and his non-party adult children "in which [petitioner] has an interest whatsoever, no matter how denominated and wherever located". . . . and "shall issue without bond and shall continue in force and effect until further order of the Court.(App.27-28).(Emphasis added)

Petitioner was not served with legal process until December 14, 1994, some 40 days after the commencement of the divorce action and 14 days after the issuance of the ex parte temporary restraining order. Within three hours of being served, petitioner proceeding pro se, filed an emergency motion to dismiss the action on the grounds that the Ohio decree was entitled to full faith and credit under Article IV §1 of the United States Constitution. (App.29)

On December 14, 1994, respondent trial divorce court commissioner McDonald, acting in his capacity as a superior court duty judge reviewed the divorce court's pleadings file and determined that respondent Chalker had not disclosed the existence of the Ohio decree on the record at the time the chief judge of the domestic relations division issued the temporary restraining order. Finding "good cause"(App.32) based upon petitioner's representation that

he would have to suspend operation of his business for want of operating capital, that he would be unable to pay his rent, utilities, and other necessities of life and financial obligations, and that he would be unable to pay child support because of the restraining order, respondent trial divorce court commissioner McDonald scheduled an expedited hearing for the following week on pro se petitioner's emergency motion to dismiss for Monday, December 19, 1994. (App.32)

Two days later, on Friday morning, December 16, 1994, petitioner received a telephone message on his office voice mail from a secretary calling from the chambers of the chief judge of the domestic relations division, the same judicial officer that had previously issued the ex parte temporary restraining order without notice on December 1, 1994, informing him that the divorce court had issued a sua sponte order continuing the emergency hearing from December 19, 1994, until January 11, 1995.(R.68)[7] Almost five months later on May 5, 1995, one of respondent's divorce lawyers unabashedly disclosed in an affidavit in support of his application for attorneys fees that he was a judge pro tempore of the domestic relations division of the Pima County superior court since 1985, and further claimed time in his affidavit for attendance at a private ex parte conference with the chief judge conducted off the record on the very morning that the chief judge's secretary called petitioner to inform him that the "emergency" hearing scheduled by respondent McDonald for 8:30 a.m. Monday, December 19, 1994 was cancelled sua sponte. (R.105-107)[8]

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[7]**The record reflects that the sua sponte order was not filed with the Clerk of the Superior Court until December 22, 1994.**

[8]**Specifically, on May 5, 1995 respondent Chalker's divorce law-**

Because of the abrupt and inexplicable cancellation and delay of the "emergency" hearing, petitioner could no longer meet his ongoing financial responsibilities; the proceedings rescheduled for January 11, 1995 -- some 41 days after the ex parte temporary restraining order without notice placed substantially all of his assets beyond his reach -- would come too late in the day. Without access to the sequestered funds petitioner was unable to retain a divorce attorney, was unable to meet his basic necessities of life and was rendered homeless, was forced to immediately suspend operation of his business for want of operating capital, place his belongings in storage, vacate his Tucson

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yers from two separate law firms filed an affidavit in support of attorneys fees for services rendered from October 15, 1994 to March 14, 1995 for hours expended by four lawyers, several paralegal/law students, support staff and private investigators in the amount of $43,308.92 for a divorce judgment secured by default in proceedings that petitioner only filed two substantive motions. The motion was granted in that amount by respondent McDonald on January 16, 1996. The attorney fees affidavit attested that on Friday, December 16, 1994 respondent Chalker's attorney attended a private "[c]onference with Judge Alfred and secretary," followed later that morning with a "[c]onference with Marissa, Judge Alfred's secretary"(R.106), the chief judge of the domestic relations division, the same judicial officer that issued the December 1, 1994 ex parte temporary restraining order without notice. The off the record private"conferences" with the chief judge of the domestic relations division of the superior court and his secretary were conducted without any notice to petitioner, and took place on the very morning the chief judge's secretary called to inform him that the emergency hearing scheduled for Monday, December 19, 1994 was continued to January 11, 1995. Further, the fee affidavit disclosed for the first time that respondent 's lead divorce lawyer was a judge pro tempore of the domestic relations division of the superior court since 1985. (R.105-108)

apartment, and relocate to Nashville, Tennessee, to reside with this oldest son. (R.68)[9]

Following the January 18, 1995 entry of the remand order by the Arizona district court petitioner noticed his change of address with the clerk of the superior court and opposing counsel on January 27, 1995. (R.12)

On January 27, 1995 respondent Chalker's divorce lawyers filed a motion to continue the "emergency" hearing now re-scheduled to hear petitioner's motion to dismiss for February 16, 1995. On January 31, 1995 petitioner mailed two separate pro se oppositions to the continuance because his assets would now be seized for more than 60 days

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[9] **Frustrated and obstructed by the divorce court's clear refusal to vindicate clearly established rights to a prompt, immediate and expeditious post-seizure hearing, petitioner turned to the federal courts to enforce rights that would be lost in the pending divorce action. See, Lynk v. LaPorte Superior Court, 789 F.2d 554, 559-564 (7th Cir.1986) (Posner, J.)(discussing Catch-22 jurisdiction and misapplication of the "Rooker-Feldman" and "Domestic Relations Exception" doctrines). Relying on Lynk, on December 19, 1994, petitioner filed a petition to remove the divorce proceedings to federal court pursuant to 28 U.S.C.§ 1441(b) (federal question). Chalker v. Catz, No. 94-872-TUC-ACM (D.Ariz.).**

On January 18, 1995, the district court entered an order remanding the case back to the state divorce court for lack of subject matter jurisdiction. The district court relied on the "domestic relations exception" doctrine under Ankenbrant v. Richards, 504 U.S. 689 (1992), even though removal was invoked under federal question and not diversity jurisdiction. Federal question removal was based on respondent Chalker's affidavit filed in support of the temporary restraining order which alleged a due process notice defect in service of summons in the 1988 Ohio divorce proceedings. Mullane v. Central Hanover Bank & Trust Co. 339 U.S. 306 (1950). Respondent's affidavit stated that at "no time have I ever been served with a petition for dissolution or similar pleading nor any judgment purporting to enter a divorce between myself and Robert S. Catz."(R. 96)

without any kind of hearing. On February 3, 1995 the clerk of the court mailed petitioner's pro se oppositions back to him without explanation. (R.13)

On February 6, 1995 respondent trial divorce court commissioner McDonald granted respondent Chalker's motion for a continuance and rescheduled the hearing for March 14, 1995. The assets would now be sequestered for more than 103 days without some kind of post-seizure hearing. (App.33) Even though the only noticed purpose of the February 6th proceeding was to consider the continuance motion, and even though both respondent McDonald and respondent Chalker knew as a matter of record the petitioner now resided in Nashville, Tennessee, the divorce court nonetheless issued a sua sponte order compelling petitioner to appear for deposition in Tucson, Arizona, in three days on February 9, 1995 or face sanctions. The order was entered on February 6, 1995.(App.33) The clerk however did not mail the order to petitioner until February 7, 1995. (R.25) It arrived in Nashville on February 11, 1995, two days after the date of the scheduled deposition. (R.68)

On February 10, 1995, respondent Chalker filed a motion for sanctions and contempt along with a notice of hearing that failed to specify the date and time for the hearing. (R.26) Respondent Chalker's counsel mailed the motion and notice of hearing to petitioner on February 15, 1995, although the proof of service certified that it had been mailed on February 10, 1995.(R.27-28) The motion and notice of hearing arrived in Nashville on February 21, 1995. (R.72)

Without any prior notice to petitioner from the divorce court or respondent's counsel, respondent trial

divorce court commissioner McDonald conducted a hearing on respondent Chalker's motion for sanctions on March 2, 1995. It found petitioner in "contempt" of court for his "willful" failure to comply with the order of February 6, 1995, compelling his attendance three days later for a deposition in Tucson. (App.36) As a further sanction respondent McDonald also vacated petitioner's pro se motion to dismiss, granted respondent partial default judgment, and set an evidentiary hearing on the default judgment for March 14, 1995. (App.36-39)

Respondent trial divorce court commissioner McDonald executed the minute order on March 2, 1995, but the clerk did not formally enter it on the docket until March 10, 1995. (App.36). The minute entry was sent to petitioner by first class mail that day, arriving in Nashville on March 14, 1995, the very day of the scheduled default evidentiary hearing. (R.68)

Despite the failure to provide timely and adequate prior notice to pro se petitioner, respondent McDonald nonetheless proceeded with the default hearing on March 14, 1995. At hearing, without a scintilla of clear and convincing evidence, the divorce court held the 1989 Ohio decree "null and void" on grounds that pro se petitioner, while an active member of the Ohio bar and an officer of this Court had "fraudulently obtained" a divorce from the Ohio divorce court in Catz v. Catz, No. D-191073 (CCP Cuyahoga Cty., Ohio filed April 10, 1989) (App.42), in violation of Article IV § 1 of the U.S. Constitution by failing to give the Ohio judgment the same preclusive effect it would be entitled to under the law of the rendering State of Ohio [Humble v. Brown, 368 N.E.2d 294, 296 (Ohio 1977) (clear and convincing evidence standard for fraud)] as

required by this Court in Durfee v. Durfee, 375 U.S. 106, 109 (1963); Aldrich v. Aldrich, 378 U.S. 540 (1964) and Williams v. North Carolina, 325 U.S. 226, 233-34 (1945). (R.108-130) The divorce court also granted respondent Chalker a final decree of dissolution (App.42-46), $1,000 a month in alimony, awarded her sole custody of the parties minor son, along with $700 a month in child support, denied petitioner any right to visitation except at the sole discretion of respondent Chalker, and ordered the transfer of all of the assets belonging to petitioner, as well as the assets belonging to his non-party adult children sequestered by the ex parte temporary restraining order without notice of December 1, 1994, an amount in excess of $700,000. (App.44) Further, the Arizona record reveals that respondent McDonald denied the Ohio decree full faith and credit without ever receiving into evidence an authenticated copy of the record of Ohio proceedings as required by 28 U.S.C. § 1738 which would show that respondent Chalker had been properly served in 1988 at her attorney registration address she provided to the Florida and District of Columbia Bars.

Petitioner received the March 14, 1995 final judgment of divorce entered by default in Nashville on March 18, 1995 by certified mail. (R.68)

On March 28, 1995 petitioner, now permanently stripped naked of all his assets and totally indigent, sent a timely verified combined pro se motion to alter or amend the judgment and/or relief from judgment, pursuant to Rules 59 and 60 of the Arizona Rules of Civil Procedure (R.65-66), asserting the due process notice, procedural and mailing irregularities as grounds for relief, along with a pro se motion and supporting affidavit of poverty to proceed *in forma pauperis* under Boddie v. Connecticut, 401 U.S. 371

(1971). (App.47-49) The pleadings were timely delivered the next day to the clerk of the superior court by Federal Express. (R.88)

Two weeks later, on April 11, 1995, the clerk returned all of petitioner's pro se pleadings, along with a preprinted questionnaire required of litigants unable to pay fees and costs. (R.59-66) The clerk's package arrived in Nashville, on April 14, 1995; it provided no explanation for the clerk's decision to return the combined Rule 59/60 motion unfiled. (R.59)

Rule 59 of the Arizona Rules of Civil Procedure allows a party 15-days to file a motion to alter or amend the judgment; it also tolls the 30-day period for filing a notice of appeal until such time as the rendering court denies the motion. The clerk's belated and inexplicable failure to file his timely combined Rule 59/60 motion consequently deprived petitioner not only of the tolling period, but of his ability to perfect an appeal, the 30-day period having expired on April 13, 1995.

Having thus been deprived of his right to file a direct appeal from the default judgment, petitioner -- along with his adult children, Nashville, Tennessee residents -- filed an original action in the United States District Court for the Middle District of Tennessee on October 2, 1995 under Tennessee's long-arm statute, seeking declaratory and injunctive relief from the enforcement of the Arizona judgment on the grounds it was secured without plaintiffs being afforded a full and fair opportunity to be heard before the Arizona divorce court in violation of the Due Process Clause of the Fourteenth Amendment.[10]

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[10] **Shawn D. Catz et al v. Chalker, Fidelity Investments, Teachers Insurance Annuity Association-College Retirement Equity Fund,**

On October 20, 1995 the federal district court issued a status quo temporary restraining order enjoining the enforcement of the Arizona judgment pending a full evidentiary hearing and decision on a motion for a preliminary injunction.

On February 7, 1996, following a three day evidentiary hearing, the district court wrote that "the lack of notice of the Arizona state proceedings, calloused treatment, collusion, unilateral hearings, and draconian measures taken in [petitioner's] absence are shocking. Apparently, [petitioner has] never had a hearing on the merits of his claims."[11] (App.12) The Tennessee district court nevertheless felt compelled to dismiss the action for want of subject-matter jurisdiction under the "Rooker-Feldman"[12] and "Domestic Relations Exception"[13] doctrines, noting that "although the violations alleged by plaintiffs are egregious. . . . relief for their claims is appellate review in the state court system and writ of certiorari to" this Court under 28 U.S.C.§ 157.[14] (App.18) (Emphasis added) Following the Tennessee district court's dismissal on jurisdict-

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& Waterhouse Securities, No.CV 3-95-947(M.D. Tenn.) (App.1-20)

[11] Id. (App.12)

[12] District of Columbia Court of Appeals v. Fidelity Trust Co., 460 U.S. 462 (1983) (Stevens,J. dissenting); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) (federal review of state court judgment available only under 28 U.S.C. §1257). See, ARASCO, Inc. v. Kadish, 490 U.S. 605 (1989).

[13] Barber v. Barber, 43 U.S. 689(1923); In re Burris, 136 U.S. 586 (1890); Ankenbrandt v. Richards, 504 U.S. 689(1992) (federal courts have no judicial power over "core"issues of divorce matters).

[14] An appeal from the jurisdictional dismissal is currently pending in the Sixth Circuit. Catz et al v. Chalker et al. No. 96-5776(6th Cir.).

diction and abstention grounds petitioner sought extraordinary relief in the nature of mandamus/prohibition by returning to the Arizona courts by filing on April 1, 1996 an original petition for special action in the Arizona Court of Appeals seeking to void the March 14, 1995 default judgment, the December 1, 1994 ex parte temporary restraining order issued without notice, and the March 10, 1995 contempt-sanction order on the grounds that petitioner was denied any and all opportunity for some kind of post-seizure hearing of the taking of his assets before permanent deprivation and that the "shocking" combined procedural and notice irregularities in the "draconian" divorce court proceedings violated the Due Process Clause of the Fourteenth Amendment.[15] Without reaching the merits of the constitutional and other state law claims presented or providing any statement of reasons, the Arizona Court of

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[15] **Catz v. Chalker et al., No. 2 CA-SA-96-0051(Ariz.App.Div.2). Under Ariz.Rev.Stat §12-201, the Arizona court of appeals has original jurisdiction to hear a petition for special action in the nature of common law writs of mandamus and prohibition collaterally attacking a judgment wanting in due process where no legal remedy or adequate remedy is available by direct appeal. Cravens, Dargan & Co. v. Superior Court, 737 P.2d 1373(Ariz.1987). Under Arizona law, a judgment void as wanting in due process can be attacked at anytime. Phoenix Metals v. Roth, 737 P.2d 1373(Ariz. 1987). Special action petitions may be invoked to challenge the constitutionality of a state statute. Zamora v. Reinstein, 915 P.2d 1227,1229(Ariz.1996). The federal question brought to this Court was fairly presented in the original special action petition filed in the Arizona Court of Appeals (App.50), and the due process question presented here was expressly preserved and fairly presented to the Supreme Court of Arizona. (App.54). S.C. Rule14.1(g)(i).**

Appeals summarily declined to exercise its discretionary jurisdiction on May 2, 1996. (App.53)

Petitioner timely filed a pro se petition on May 17, 1996 seeking a review of the final judgment of the Arizona Court of Appeals. On October 25, 1996, the Arizona Supreme Court denied review. (App.56)

On January 10, 1997 Justice O'Connor issued an order granting petitioner's motion to extend the time for filing the petition for writ of certiorari to and including February 22, 1997.

This timely petition for a writ of certiorari to the Arizona Court of Appeals follows.

VI. REASONS FOR GRANTING THE PETITION

I. THE "DRACONIAN" ARIZONA DIVORCE COURT JUDGMENT WAS RENDERED IN A MANNER SO PATENTLY REPLETE WITH "SHOCKING" AND "EGREGIOUS" VIOLATIONS OF FUNDAMENTAL CONSTITUIONAL NORMS AND STANDARDS AS TO MAKE A FARCE AND MOCKERY OF RIGHTS CLEARLY ESTABLISHED BY THIS COURT DEPRIVING THE JUDGMENT OF ANY CONSTITUTIONAL VITALITY UNDER THE FOURTEENTH AMENDMENT

This case involves an extraordinary assertion and arbitrary exercise of state judicial authority that strikes at the very core of the Supremacy Clause and the constitutional guarantee of due process of law. The federal district court which considered the due process challenge to the default divorce judgment at issue here after conducting a

three day evidentiary hearing, in which respondent Chalker declined to attend as a witness and subject herself to direct and cross examination, characterized the procedural history of this case for its total "lack of notice [of the Arizona state proceedings], calloused treatment, collusion, unilateral hearings, and draconian measures taken in [petitioner's] absence are shocking. Apparently, [petitioner has] never had a hearing on the merits of his claims." Shawn Catz, et al. v. Chalker, No. 3-95-CV-947 (M.D. Tenn.).(App.12) Notwithstanding these clear constitutional violations, the district court nonetheless concluded, however, that it lacked subject matter jurisdiction under the "Rooker-Feldman" and "Domestic Relations Exception" doctrines to grant relief because federal review of final state court divorce judgments is available only in this Court under 28 U.S.C. § 1257. See, ARASCO,Inc. v. Kadish, 490 U.S. 605 (1989).

This Court therefore appears as the final and only bulwark against a state court default judgment rendered in a manner which disregards and makes a face and mockery of a long and unbroken line of decisions of the Court protecting bedrock and clearly established fundamental and core due process rights under the Fourteenth Amendment.

A. The Ex Parte Prejudgment Taking of Property Without Probable Cause and the Total Absence of Any Opportunity for a Prompt, Immediate and Expeditious Post-Seizure Hearing and Bond Requirement to Protect Against the Severe Consequences of an Erroneous Deprivation

Based on self-serving, one-sided conclusory affidavits which failed to candidly disclose the existence of the 1989

Ohio divorce decree [which was in the physical possession of respondent Chalker's divorce lawyers since at least November 9, 1994 (R.4)], and without requiring *any* security to protect against the erroneous deprivation of property, the Arizona divorce court issued an ex parte prejudgment "Temporary[16] Restraining Order Without Notice" pursuant to Ariz. Rev. Stat. § 25-315 D & F which dispossessed petitioner of virtually all of his assets and those of his non-party adult children until "the final decree is entered or when the petition for dissolution is dismissed," without *any* opportunity for a prompt, immediate and expeditious post-seizure hearing to contest its propriety and without *any* probable cause showing that respondent Chalker was likely to prevail on the merits of her claim by clear and convincing evidence under the law of the rendering state of Ohio.[17] Humble v. Brown, 368 N.E.2d 294 (1977).

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[16]**Under Ariz. Rev. Stat. §25-315 there is nothing "temporary" about a domestic relations restraining order. The purpose of an injunction under the statute is prohibit actions by married parties that would result in dissipation of the marital estate or place marital assets beyond the reach of the Arizona courts. Lonergan v. Strom, 700 P.2d 893, 896-97(Ariz.App.1985). In Granny Goose v. Teamsters, 415 U.S. 423, 439(1979) the Court observed that "ex parte restraining orders are no doubt necessary in certain circumstances, but under federal law they should be restricted to serving the underlying purpose of preserving the status quo and preventing irreparable harm *just so long as is necessary to hold a hearing, and no longer.* (Emphasis added)**

[17]**In addition to Ariz. Rev. Stat. §25-315 several of the states have enacted special domestic relations injunction statutes identical or similar to the Arizona statutory scheme which make no provision for a prompt, expeditious and immediate post-seizure hearing following the issuance of a restraining order without notice or requiring bond to protect against erroneous deprivation of property.See,Colo.Rev.Stat.§14-108(1996);Del.Code.§1509(1995); Ill.Comp.Stat.§5501(1996); Ky. Rev. Stat. §403.160 (1996) ; Minn.**

The Arizona statutory scheme on its face and as applied to the taking of petitioner's property, and that of his non-party adult children, cannot be reconciled with a long line of decisions rendered by this Court reviewing due process challenges to a variety of summary prejudgment remedial devices enacted by the state legislatures.

Beginning with Sniadach v. Family Finance Corp., 395 U.S. 337 (1967), this Court has examined the constitutional validity of a host of summary remedies authorizing the prejudgment taking of property as here. See, e.g., Fuentes v. Shevin, 407 U.S. 67 (1972); Mitchell v. W.T. Grant, 416 U.S. 699 (1974); North Georgia Finishing v. Di-Chem, 419 U.S. 601 (1975); Connecticut v. Doehr, 501 U.S. 1 (1991); United States v. James Daniel Good Real Property, 510 U.S. 43 (1993). These cases, drawing on earlier precedent, have established fundamental core constitutional principles regarding the due process implications of statutory prejudgment seizure remedies:

Due process protections extend to any significant property interests and any significant taking of property. Boddie v. Connecticut, 401 U.S. 371, 379 (1971); Goldberg v. Kelley, 397 U.S. 254, 255 (1970);

Individuals whose liberty or property interests are affected are entitled to an opportunity to be heard. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-315 (1950);

The opportunity to be heard must be provided at a meaningful time and in a meaningful manner. Armstrong v. Manzo, 380 U.S. 545, 552 (1965);

Stat.§ 518.091(1996); Mo.Stat. § 452.315(1995); Mont.Code§ 40-4-121(1995); S.D.Code §25-4-33.1(1996); Wash.Code §26.09.060 (1996); W.Va.Code §48-2-34(1996); Wyo.Stat.§20-2-109(1996).

Notice and a hearing before a deprivation of property may be postponed in "extraordinary situations" but only if an immediate and prompt opportunity for a post-seizure hearing is provided under a narrowly drawn statute. Connecticut v. Doehr, supra at 10-12.

This Court has thus steadfastly adhered to the principle that persons affected by the taking of property are entitled to some kind of post-seizure hearing, expeditious, prompt or immediate, at some point in time before the final and permanent taking of property as a matter of constitutional law.

Surely presumptively divorced parties[18] are to be afforded the same minimal constitutional protections and safeguards afforded alleged marijuana smugglers, Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 517 (1974) (ex parte seizure of yacht allegedly used for smuggling); convicted prisoners, Hudson v. Palmer, 468 U.S. 517 (1984) (state must provide post-deprivation remedy when prisoner alleges property taken by prison personnel); drunk drivers, Mackney v. Montryn, 443 U.S. 1 (1979) (suspension of driver's license requires prompt post-suspension hearing); horse trainers, Barry v. Barchi, 443 U.S. 55 (1979) (interim suspension of trainer's license following positive test of horse for drugs requires prompt post-suspension hearing); public high school students, Goss v. Lopez, 419 U.S. 565 (1975) (students removed from

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[18] **By virtue of the presumptively valid 1989 Ohio divorce decree, Williams v. North Carolina, 325 U.S. 226,233-233-34(1945), respondent Chalker could claim no cognizable interest in the sequestered "marital" assets at the time that the ex parte temporary restraining order without notice was issued. Further under Arizona law a prior divorce decree is entitled to be treated as presumptively valid. Carnahan v. Carnahan, 290 P.2d 729,730-31(Ariz.1950).**

public school for alleged misconduct posing danger to others entitled to post-suspension hearing within 10 days); disability recipients, Mathews v. Eldridge, 424 U.S. 319 (1976) (state must provide prompt post-termination hearing to recipient of disability benefits); public employees, Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985)(terminated public employee entitled to post-discharge hearing).See, H.Friendly, Some Kind of Hearing, 123 U. PA. L. REV. 1267, 1301-02 (1975); R.Catz & E.Robinson, Due Process and Creditor Remedies: From *Sniadach* ,and *Fuentes* to *Mitchell, North Georgia* and Beyond, 28 RUTGERS L.REV.541(1975).

In Connecticut v. Doehr, 501 U.S. 1, 18-23 (1991) (White, J. separate plurality opinion joined by Marshall, Stevens and O'Connor, JJ.) four members of this Court expressed the view that the Due Process Clause requires a bond or security requirement to protect against erroneous deprivation of property. Following this Court's decision in Doehr, the Second Circuit, Tenth Circuit and the Connecticut Supreme Court have rendered conflicting decisions with the First Circuit and the Rhode Island Supreme Court on the precise question left unresolved by this Court and subsumed within the larger due process question presented here: whether due process requires the posting of bond before seizure of assets where the opposing party's only legal interest in prejudgment sequestration is to ensure the continued availability of assets to enforce a possible favorable judgment, especially in a case where, as here, the moving party has a "heavy [clear and convincing] evidentiary burden", (Williams v. North Carolina, supra, 325 U.S. at 233-234)) at trial to collaterally attack a prior judgment of a sister state court. Cf., Result Shipping Co.

v. Ferruzzi Trading, 56 F.3d 394, 402-403 (2d Cir. 1995); Shauyman v. O'Neil, 987 F.2d 122, 128-129(2d Cir. 1993) (constitutional), Cobb v. Saturn Land Co., 966 F.2d 1334, 1337 (10th Cir. 1992) (constitutional) and Sassone v. Lapore, 629 A.2d 357, 362-63 (Conn. 1993) (Berdon and Katz, JJ. dissenting) (constitutional) with Reardon v. United States, 947 F.2d 1509, 1519 (1st Cir. 1991) (en banc) (unconstitutional) and Shawmut Bank of Rhode Island v. Costello, 643 A.2d 194, 201-02 (R.I.1994)(unconstitutional).

Finally, and specifically relevant to petitioner and the Arizona statutory scheme under attack in this case, the constitutionality of Ariz. Rev. Stat. § 25-315A was challenged on due process grounds in Stone v. Godbehere, 894 F.2d 1131 (9th Cir. 1990). Ariz. Rev. Stat. § 25-315A requires that "in all actions for dissolution of marriage or for legal separation, the clerk of the court shall pursuant to order of the superior court issue a preliminary injunction . . . the preliminary injunction shall be directed to each party to the action" and must be served with the initial summons and complaint in all cases.(Emphasis added)

On December 14, 1994, along with the ex parte temporary restraining order without notice issued on December 1, 1994 the petitioner was also served with the automatic mandatory and ministerial preliminary injunction issued by the clerk on November 4, 1994.(App.24-25) Under Ariz. Rev. Stat. § 25-315A(1)(a) the clerk of the superior court is required to automatically issue a standing mandatory preliminary injunction in all divorce cases on the mere filing of divorce complaint without prior notice and a bond. The standard form preliminary injunction is issued without *any* judicial supervision or involvement, enforceable by

contempt and prosecution for the crime of intereference with judicial proceeding which provides:

> (a) That both parties are enjoined from transferring, encumbering, concealing, selling or otherwise disposing of any of the joint, common or community property except if related to the usual course of business, the necessities of life. . . .without the written consent of the parties or permission of the court. (App.24)

Ariz. Rev. Stat. § 25-315A(2) also provides that the preliminary injunction shall include the following statement:

> **WARNING**
>
> This is an official court order. If you disobey this order the court may find you in contempt. You may also be arrested and prosecuted for the crime of interfering with judicial proceedings. . . .

(Emphasis added) (App.59)

In Stone, the plaintiff was incarcerated for violating the mandatory preliminary injunction issued under § 25-315A. The Ninth Circuit, in denying habeas corpus relief under 28 U.S.C. § 2254, held that § 25-315A did not violate due process under Sniadach, Fuentes and Mathews v. Eldridge:

> The Arizona statute is an automatic mandatory deprivation of property involved in a divorce proceeding. Stone claims that his property interests are inadequately protected without an immediate hearing to determine the "scope and necessity of the injunction". (citation omitted) But the statute does not restrict the property right only when an injunction is "necessary"; it restricts the property right in every case. Ariz. Rev. Stat. Ann. § 25-315A. Stone presents no evidence or allegation that

> there is any risk that the wrong parties will be named, or that an injunction could issue where no petition for divorce has been filed. Because the risk of erroneous deprivation of property is minimal or nonexistent, the existing procedure satisfies due process. 894 F.2d at 1131.

This provision of Ariz. Rev. Stat.§ 25-315 requiring the clerk of the superior court to issue a ministerial preliminary injunction simply upon the mere filing of the divorce complaint without *any* prior notice, without *any* judicial supervision, and without *any* opportunity for a hearing is unconstitutional under Fuentes v. Shevin, 407 U.S. 67, 73-74 (1972) (due process requires judicial supervision before court of clerk may issue prejudgment writ of attachment).

The panoramic record of these proceedings dramatically demonstrates that petitioner, presumptively divorced from respondent Chalker at the time of the filing of her action for dissolution of marriage, and his non-party adult children were indeed subject to "erroneous deprivation of property", which was neither "minimal" nor "nonexistent." The ex parte temporary restraining order issued by the chief judge of the divorce court supported solely by one-sided, self-serving, conclusory affidavits, and the mandatory preliminary injunction automatically issued by the clerk on the mere filing of the divorce complaint without affidavits,were both issued without *any* prior notice, without *any* opportunity for a prompt hearing, without *any* probable cause showing and without *any* bond requirement. This case provides the Court with another opportunity to consider the precise question left unresolved in Doehr, under "shocking" and "draconian" factual circumstances that vividly illustrate

the need for a final resolution of important and fundamental questions of constitutional law.

B. The Total Lack of Any Prior Notice of "Unilateral Hearings" and Other "Shocking" And "Draconian" Unconstitutional Procedural Defects Leading up to the Entry of a Coerced Default Judgment as a Discovery Contempt Sanction and the Loss of Direct Appeal

The divorce court's "shocking" and "egregious" departure from established constitutional norms and modes of procedure such as "unilateral hearings in [petitioner's] absence", which started with the issuance of the ex parte temporary restraining order without notice, the lack of service of process on the petitioner's adult children, the abrupt cancellation of the "emergency" hearing, the "draconian" default judgment as sanction for contempt, the numerous mailing and notice irregularities combined, including a "collusive" private "conference" off the record with the chief judge of the divorce court and respondent Chalker's divorce lawyer, a judge pro tempore of the divorce court since 1985, all culminating with petitioner's loss of his right to defend and appeal *in forma pauperis* under Boddie v. Connecticut, 401 U.S. 371, 374 (1971), run afoul of the Due Process Clause of the Fourteenth Amendment.

The right of access to the courts and the corresponding right to defend are core and fundamental rights firmly established in a long line of decisions of the Court. M.L.B v. S.L.J., 117 S.Ct. 555 (1996)(state may not block an indigent access to appeal afforded others by creating

barriers in action to terminate parental rights). See, Wolff v. McDonald, 418 U.S. 539, 579 (1974)(right of access to courts is "founded on Due Process Clause and assures that no person will be denied an opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights"); Ex parte Hull, 312 U.S. 546, 547-548(1941)(state may not abridge or impair access to the courts).

This Court has consistently held that due process requires "some form of hearing before an individual is finally deprived of a liberty or property interest" and that "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (citations omitted). As early as Magna Carta, process and procedure have been regarded as an important and valuable means for protecting the rights of litigants. In the United States, with the founders' desire to check arbitrary government, procedural safeguards were guaranteed to all persons by the inclusion of the due process clauses in the federal and state constitutions.

Few principles of law are as elemental and venerable as "a party is not to suffer . . . without an opportunity to be heard." Painter v. Liverpool Gas & Light Co., 11 English Rep. 478, 484 (K.B. 1836). "*Audi alteram partem* -- hear the other side," a demand made earnest through the centuries, is now a constitutional command spoken with the voice of the due process clause of the Fourteenth Amendment . . . " Caritativo v. California, 357 U.S. 549, 558 (1958).

Yet nothing contained in record of the Arizona divorce court proceedings remotely suggests any rudimentary

appreciation for these basic and venerable constitutional values.The aberrational and bizarre manner in which the Arizona divorce court conducted these proceedings exhibits an abuse of judicial power of the highest magnitude without the slightest regard or even apparent cognition or consideration given to the Supremacy and Due Process Clauses. All of the peculiar and wondrous constitutional notice and other "egregious" procedural irregularities reflected in the divorce court record "concerning the lack of notice of the Arizona divorce proceedings, calloused treatment, collusion, unilateral hearings, and draconian measures taken in [petitioner's] absence" are so "shocking" and "draconian" as to make a farce and mockery of the unconstitutional Arizona divorce proceedings. Wetmore v. Karrick, 205 U.S. 141, 149 (1907) (full faith and credit does not apply to judgment wanting in due process).

A court's aberrant "departure from established modes of procedure [can] render the judgment void," Windsor v. McVeigh, 93 U.S. 274, 282 (1876). This is particularly so when the procedural defects are of sufficient magnitude and "so unfair [as the state court record here amply demonstrates] as to deprive the . . . proceeding of its vitality." Eagles v. United States, 329 U.S. 304, 314 (1946). And, as here a default judgment improperly entered as a punishment or sanction for contempt is void for want of due process. Hovey v. Elliott, 167 U.S. 409, 415-417 (1896) (tracing the prohibition against the taking of property without notice and an opportunity to be heard to the Magna Carta and the common law of England); Societe International v. Rogers, 357 U.S. 197, 212 (1958) (severe sanctions may only be imposed for "willful" or "bad faith" violations of court orders); Baldwin v. Hale, 68 U.S. 223,

233 (1863) (parties whose rights are affected entitled to be heard and in order to be heard they must be notified); Hansberry v. Lee, 311 U.S. 32, 40 (1941) (person not named as party or not made party by service of process is not bound by a judgment in personam).[19]

And a judgment in which a party was denied a "full and fair opportunity" to assert claims and defenses violates due process and is therefore not entitled to judicial recognition under 28 U.S.C. § 1738 and the Full Faith and Credit Clause of Article IV § 1 of the United States Constitution. Kremer v. Chemical Construction Corp., 456 U.S. 461, 481-482 (1982) (court may not grant preclusive effect to a constitutionally infirm judgment and other state and federal courts are not required to accord full faith and credit to such a judgment); Marresse v. American. Academy of Ortho-pedic Surgeons, 470 U.S. 373, 380 (1985) (28 U.S.C. § 1738 requires federal courts to give same preclusive subject to due process requirements); Haring v. Prosise,462 U.S. 306, 311 (1983) (same); Migra v. Warren City School. Board. of Education, 465 U.S. 75, 83 n.5 (1985) (same); Allen v. McCurry, 449 U.S. 90, 95, 101 (1980) (full and opportunity to assert claims required before judgment entitled to preclusive effect). See also, Thourner v. Meyer, 803 F.2d 1093 (10th Cir. 1986) (no full and fair opportunity to be heard with one day notice and four day total life of state court action); Gray v. Lacke, 885 F.2d 399 (7th Cir.1989) (full and fair opportunity to be heard also includes an opportunity to file a direct appeal).

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[19]**The Seventh Circuit has characterized these line of Supreme Court cases combined as recognizing a" *fundamental and historical right to defend* rooted in the Due Process Clause". United States v. $40,877.59 in U.S. Currency, 32 F.3d 1151,1153(7th Cir.1994).**

In sum, given the "shocking" and "draconian" manner in which the Arizona divorce court conducted its proceedings, leading to the entry of default judgment without notice as a punishment for "contempt" and culminating in the loss of petitioner's right to perfect an appeal, the invalidity of the Arizona state court judgment cannot seriously be open to question. The record lucidly demonstrates the Arizona divorce court's unwarranted departure from established universal modes of procedure as to make a farce and mockery of the fundamental and established due process decisions of this Court by denying petitioner and his adult non-party children *any* semblance of an opportunity to be heard.

The Arizona divorce court's use of default judgment as a discovery sanction after finding petitioner in "contempt" for his "willful" failure to comply with a sua sponte order to attend a deposition which arrived at his Nashville residence of record by mail after the fact, resulting in the permanent transfer of more than $700,000 in sequestered assets belonging to him as well as his non-party adult children without prior notice violates due process as the discovery sanction imposed by respondent McDonald as punishment for contempt was grotesquely excessive and "draconian" in light of the divorce court's unsupported finding of willfulness and is fundamentally unfair as it is grossly disproportionate and unnecessary to vindicate any court's legitimate interest in punishing alleged recalcitrant discovery conduct and deterring its repetition. B.M.W. of North America v. Gore, 116 S.Ct. 1589, 1595-1599 (1996).See also, TXO Production Corp. v. Alliance Resources Corp., 509 U.S. 443, 456 (1993) (sanction enters zone of arbitrariness under the Due Process Clause when it

can be fairly categorized as "grossly excessive" in relationship to the State's legitimate interest in punishment and deterrence); International Union v. Bagwell, 114 S.Ct. 2552, 2557 (1994) (civil contempt sanctions or those penalties designed to compel future compliance with court order may only be imposed upon notice and opportunity to be heard).

The "shocking", "draconian" and "egregious" combined constitutional irregularities which occurred in the Arizona divorce court proceedings leading up to the coercive entry of a final default judgment without notice and the denial of petitioner's right to pursue a direct appeal, cannot be reconciled with clear and venerable rights established by the Court regarding constitutional notice requirements and the fundamental and historic right to defend rooted in the Due Process Clause which cannot be left to stand.[20] The Court has long held that departure from

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[20]**In light of the "Rooker-Feldman" and "Domestic Relations Exception" doctrines the petitioner and his non-party adult children have no apparent federal court remedy available to them to collaterally attack the Arizona divorce decree as review of the constitutional claims is only available in this Court under 28 U.S.C. § 1257. ARASCO v. Kadish, 490 U.S. 605,622(1989). In light of this limitation this Court has consistently demonstrated a heightened sensitivity to grant certiorari under 28 U.S.C. §1257 where state courts diverge from enforcing clearly established constitutional rights that lower federal courts have no judicial power to consider. See, Mincey v. Arizona, 437 U.S. 385, 402-04(1978) (Marshall, J. joined by Brennan J. concurring). Ordinarily "institutional restraints totally preclude any possibility that this Court can adequately oversee whether state courts have properly applied federal law. [citation omitted]. Because of these constraints[this Court] will be faced with a Hobson's choice in cases of less national significance that could have been formally left to the lower federal courts "to resolve. Id. at 404.**

constitutionally "established modes of procedure" will render a judgment void under the Due Process Clause. Windsor v. McVeigh, 205 U.S. 141, 149 (1907).

This Court has a long tradition of granting certiorari in appropriate cases where the decision below is shockingly wrong and presents substantial due process violations where as here, state courts have been unwillingly to address or ameliorate. See, e.g., Thompson v. City of Louisville, 362 U.S. 199 (1960); Garner v. Louisiana, 362 U.S. 157 (1961); NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982) and Montana v. Kennedy, 366 U.S. 308, 309 (1961), cases where certiorari was granted in "view of the apparent harshness of the result entailed."

VI. CONCLUSION

For these reasons, this Court should issue a writ of certiorari to review the final judgment of the Arizona Court of Appeals, Second Division.

Respectfully submitted,

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February 22, 1997

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APPENDICES

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Appendix 1.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

SHAWN D. CATZ, et al.,	)	
	)	
Plaintiffs	)	
	)	
v.	)	No. 3-95-0947
	)	JUDGE ECHOLS
SUSAN R. CHALKER, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM

Presently pending before the Court is Defendant Susan Chalker's Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Lack of Personal Jurisdiction, to which Plaintiffs have responded in opposition. For the reasons outlined herein, Defendant's Motion to Dismiss is hereby GRANTED. Also pending are Plaintiffs' Motion for Preliminary Injunction and Plaintiffs' Motion Requesting Interpleader Fidelity to Deposit Bond in Registry of Court in Lieu of Cash Deposit. The Court held a hearing on Plaintiff's Motions for Preliminary Injunction and Interpleader action for over two days. The Court's decision on the Motions for Preliminary Injunction and Interpleader was reserved until its consideration of Defendant's Motion challenging the jurisdiction of the Court. All of these

motions were discussed in some fashion at the hearing. Plaintiff also has filed a Motion for Oral Argument on Defendant's Motion to Dismiss and Defendant has filed a Motion to Dismiss Plaintiff's Amended Complaint. By virtue of the Court's ruling on Defendant's Motion to Dismiss for lack of subject matter jurisdiction, these Motions are hereby DENIED as MOOT.

Plaintiffs, residents of Tennessee, filed this suit requesting that the Court issue a declaratory judgment pursuant to 28 U.S.C. §2201, that an Arizona state court judgment, entered on March 14, 1995, granting dissolution of the marriage of Plaintiff Robert Catz and Defendant Chalker is invalid the Full Faith and Credit Clause of Article IV, Section 1, and under the Due Process Clause of the Fourteenth Amendment of the United States Constitution. Plaintiffs also request that the Court permanently enjoin Defendant Fidelity Investments of the State of Massachusetts, Defendant Waterhouse Securities, and Defendant Teachers Insurance Annuity Association-College Retirement Equity Fund of the State of New York (collectively "Defendant Financial Institutions") from transferring accounts in their custody titled in the name of Plaintiffs. Plaintiffs further request that the Ohio state court judgment of April 10, 1989, granting dissolution of the marriage between Plaintiff Robert Catz and Defendant Chalker be given full faith and credit under Article IV, Section 1 of the United States Constitution.

Accepting all of Plaintiffs' factual allegations as true, as the Court must at this stage in the litigation, the factual basis for Plaintiffs' claims as stated in the Complaint is as follows: On April 13, 1980, Plaintiff Robert Catz and Defendant Chalker were married in Washington, D.C. On April 10, 1989, the marriage of Plaintiff Robert Catz and

Defendant Chalker was dissolved by a final decree entered by the Cuyahoga County Court of Common Pleas in Cleveland, Ohio ("Ohio Court").[1] Although Plaintiffs contend that the Ohio Court's decree is legally binding on Defendant Chalker, on November 4, 1994, Defendant Chalker filed a petition for dissolution of marriage in the Pima County Superior Court in Tucson, Arizona ("Arizona Court"), collaterally attacking the validity of the Ohio judgment. On December 1, 1994, the Arizona Court issued an ex parte temporary restraining order enjoining Defendant Financial Institutions from the payment, withdrawal, and/or disbursement of accounts in its custody and possession and titled in the name of the Plaintiffs. Thereafter, the Arizona Court entered a final decree and judgment on March 14, 1995, granting Defendant Chalker dissolution of marriage by default and invalidating the 1989 Ohio Court's judgment upon a finding by the Arizona Court that the judgment was not entitled to full faith and credit under Article IV, Section I, of the United States Constitution because the Ohio divorce was obtained by fraud. The Arizona decree further ordered that all accounts in the custody and possession of Defendant Financial Institutions and titled in the name of Plaintiffs be transferred to the sole ownership of Defendant Chalker.[2] According to the Complaint, the manner in which the Arizona state court opportunity to be heard.

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[1] The Ohio Court's decree purported to dissolve the marriage of Defendant Chalker and Plaintiff Robert Catz,awarding Plaintiff Robert Catz property located in the State of Ohio, and awarding Defendant Chalker property in her possession at the time of the decree. The Court declined to award alimony to either party.

[2] The decree of the Arizona Court also purported to dissol-

For instance, Plaintiffs Shawn and Jason Catz were never joined or named as parties in the Arizona state divorce action and did not receive notice of the proceedings in spite of the fact that each allegedly held an interest in some of the Tennessee investment accounts transferred to Defendant Chalker by the Arizona Court.[3] Furthermore, at the hearing held by this Court on October 26, 1995, Plaintiff Robert Catz testified that he did not receive adequate notice of the Arizona Court hearings that were held on February 6, 1995, March 2, 1995, and March 14, 1995, which resulted, among other things,[4] in the dissolution of his marriage and distribution of his assets.

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ve the marriage and distribute the marital property. However, unlike the Ohio Court, the Arizona Court awarded alimony to Defendant Chalker, and further awarded sole custody of the parties minor child, Aaaron Michael Catz, to Defendant Chalker.

[3]Plaintiffs Shawn and Jason Catz are the sons of Plaintiff Robert Catz from a previous marriage.

[4]After Defendant Chalker filed her divorce on November 4, 1994, an ex parte Temporary Restraining Order was issued by the Court against Plaintif seizing his assets until further order of the Court. Plaintiff filed an Emergency Motion to Dismiss on December 19, 1994, alleging that he had been divorced from Defendant Chalker in Ohio. On December 19, 1994, Plaintiff filed a notice of removal of the Arizona state case to the United States District Court in Arizona. He also filed an action in the District Court against Defendant Chalker and her attorneys under 42 U.S.C. 1983. On January 18, 1995, the District Court remanded the state divorce suit back to the Arizona state court. On January 27, 1995, Plaintiff mailed a notice of change of address to the state court, but it was

Defendant Chalker filed this Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) contending that the Court lacks subject matter jurisdiction and, further, that pursuant to Federal Rule of Civil Procedure 12(b)(2), the Court lacks personal jurisdiction over Defendant Chalker.

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returned to him. Afterwards, the Arziona state court held three hearings in Defendant Chalker's divorce case, On February 6, 1995, March 2, 1995, and March 14, 1995. Plaintiff was not present at any said hearings. Plaintiff alleges that he did not receive notice of any of them. Furthermore, he alleges that the state court hearing on March14, 1995, was improper because he filed a second notice of removal in the United States States District Court on March 13, 1995. On March 14, 1995, the District Court remanded the case back to the Arizona state court and ordered the Clerk not to accept further pleadings from Plaintiff without permission of the Court.As a result of the three state court hearings, the Arizona court found as follows: 1)Plaintiff was guilty of abusive and obstructive conduct,2) Plaintiff had violated the court's order to participate in discovery, 3)Plaintiff's Emergency Motion should be stricken,4)Plaintiff was not allowed to file an Answer, oppose his wife's claim or introduce evidence, 5)Defendant was entitled to default judgment against Plaintiff, 6)the Ohio divorce was null and void because it was obtained by Plaintiff through fraud,7)Plaintiff had secreted community marriage funds and assets,8)Defendant Chalker was awarded sole custody of the child of the parties with Plaintiff's visitation rights to be at Defendant Chalker's sole discretion, 9)Plaintiff was to pay Dedfendant Chalker $700 per month in child support and $1,000 per month in spousal maintenance, and 10) Defendant Chalker was awarded sole ownership of all investment, bank accounts and investment accounts of Plaintiff.

In their response, Plaintiffs contend that the Court has subject matter jurisdiction to consider their claims because: 1) there is complete diversity and the amount in controversy exceeds fifty thousand dollars; 2)the claims presented arise under the Due Process Clause of the United States Constitution, thereby granting the Court federal question jurisdiction;[5] 3)certain claims pertaining to the property settlement arise under Employees' Retirement Income Security Act, ("ERISA"), 29 U.S.C. §§ 1001-1461; and 4) certain claims arise under the Supplemental Jurisdiction Act, 28 U.S.C. § 1367(a).

All of Plaintiffs' claims arise out of the decrees of two state courts, one in Ohio and one in Arizona, each of which purported to grant a divorce to Plaintiff Robert Catz and Defendant Chalker and distribute their assets. The threshold issue to be decided by this Court is that of subject matter jurisdiction. At the outset, we note that federal courts traditionally have declined to exercise jurisdiction over domestic matters where jurisdiction is based on diversity even where the parties are diverse and the amount in controversy requirement has been met. Bennett v. Bennett, 1992 WL 3570026, No. 91-56177 at *1 (9th Cir. Dec. 3, 1992) (holding that divorce and related matters are

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[5]Plaintiffs' complaint includes allegations of constitutional violations under the Due Process Clause of the Fourteenth amendment and under the Full Faith and Credit Clause of Article IV. However, Plaintiffs have raised only the due process claim in support of the claim that the Court may exercise federal question jurisdiction in this case because"[t]he Supreme Court has held that. . . the full and faith and credit clause. . .[does not provide] a source of federal question jurisdiction." Evans v. Evans, 668 F.Supp.639, 644(M.D.Tenn.1987).

traditionally not within the subject matter jurisdiction of the federal judiciary); Firestone v. Cleveland Trust, 654 F.2d. 1212, 1215 (6th Cir. 1981) (same); Huynh Thi Anh v. Levi, 586 F.2d 625, 632 (6th Cir. 1978) (same); Karlson v. Karlson, 1993 WL 616447, No. CA93-0129113 at *1 (D.R.I. Dec. 15, 1993) (same); Evans v. Evans, 668 F.Supp. 639, 645 (M.D. Tenn. 1987) (same). The "subject of domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States." In re Burns, 136 U.S. 586, 594 (1890). Furthermore, the so called "domestic relations exception" to federal subject matter jurisdiction applies to claims that involve federal questions where the dispute would deeply involve the court in domestic matters. Thompson v. Thompson, 798 F.2d 1547, 1558 (9th Cir. 1986), (citing cases) (stating that "[e]ven when a federal question is presented, federal courts decline to hear disputes which would deeply involve them in adjudicating domestic matters.") aff'd, 484 U.S. 174 (1988); Firestone, 654 F.2d. at 1215 (noting that "[e]ven when brought under the guise of a federal question action, a suit whose substance is domestic relations generally will not be entertained in federal court") (citing Denman v. Leedy, 479 F.2d 1097, 1098 (6th Cir. 1973)); Karlson, 1993 WL 616447 at *1 (noting that the domestic relations exception applies to cases arising under federal question jurisdiction).

The primary rationale for the domestic relations exception to subject matter jurisdiction stems from principles of comity and respect for state sovereignty. Huynh, 586 F.2d at 632 ("[S]trong policies of federal-state comity and deference to state expertise in the area are the theoretical underpinnings of federal courts' refusal to consider [domestic relations] cases."). As the United States Court of

Appeals for the Sixth Circuit has recognized, "[t]he field of domestic relations involves local problems peculiarly suited to state regulation and control, and peculiarly unsuited to control by federal courts." Firestone, 654 F.2d at 1215 (quoting Buechold v. Ortiz, 401 F.2d 371, 373 (9th Cir. 1968)). Furthermore, federal courts should decline to exercise jurisdiction over domestic matters in order "to prevent friction with states and avoid interfering in state proceedings particularly where the federal questions presented are closely intertwined with issues of strong local interest." Huynh, 586 F.2d at 633. In addition to respecting a state's interest in resolving its own domestic matters, federal courts refrain from considering such cases because of the strong state interest in adjudicating domestic matters, the relative expertise of state courts in the area of family law, the ability of state courts to provide ongoing supervision, the availability of professional support services, the undesirability of potentially incompatible federal and state decrees, the danger that parties involved in domestic disputes will play one court system off against another, and the congested federal dockets. Brown v. Hammonds, 747 F.2d 320, 322 (5th Cir. 1984)); (citing Crouch v. Crouch, 566 F.2d 486, 487 (5th Cir. 1978)); Firestone, 654 F.2d at 1215; Huynh, 586 F.2d at 632.

In the present case, the gravamen of Plaintiffs' claim is that they were denied due process during the Arizona Court's proceedings, which led to the divorce decree of March 14, 1995. Although Plaintiffs have characterized their claims as alleged constitutional violations, the relief sought is to void the Arizona state court decrees mentioned above, which, among other things, voided a prior Ohio divorce decree, granted a separate divorce, along with child custody, alimony and child support to Defendant Chalker,

and transferred his assets to her. Said relief directly implicates the aforementioned principles of comity. Plaintiffs request that the Court declare the dissolution decree entered by the Arizona Court invalid. Any such finding by this Court would necessarily involve the Court in the core of a domestic dispute between husband and wife seeking to obtain a declaration of their marital status, a declaration of rights or obligations arising from said marital status, and to enforce that declaration of status, rights, or obligations. This Court's adjudication of Plaintiffs claims will directly impact the marriage status and rights between the husband Plaintiff and his wife, namely Defendant Chalker and Plaintiff Robert Catz.[6] Bennett, 1992 WL

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[6]The facts of the present case are readily distinguishable from those in Ankenbrandt v. Richards, 504 U.S. 689(1992), where the Supreme Court held that the domestic relations exception doctrine to federal jurisdiction did not apply to a tort action based on diversity that was filed in federal district court. The plaintiff-wife in Ankerbrandt was not seeking a ruling on the validity of her divorce. Rather, the Plaintiff alleged that the defendant had committed torts against Plaintiff's children that in no way implicated their status as husband and wife. Id. at 706. Conversely, in the present case, Plaintiffs have not based their claims on actions that can be resolved without first determining the validity of the state divorce decrees. In fact, not only would the Court be required to review state court decisions,it is the status of Defendant Chalker and Plaintiff Robert Catz as husband and wife that is at the core of the present litigation.The present case is more readily comparable to Barber v. Barber,16 L.Ed.226 (1859) upon which the domestic relations exception was founded. See, Ankenbrandt, 504 U.S. at 693(discussing the

357026 at *1 (holding that the court had no subject matter jurisdiction where the Plaintiff alleged that his constitutional rights were violated in state divorce proceedings because at the core issue was the status of a wife and a husband). Traditionally, marriage, divorce, child custody, support payments and division of marital assets are uniquely state matters which involve distinct issues of state law.

The potential for impermissible interference in state domestic matters is particularly strong under the facts of this case because any ruling by the Court would necessarily affect the Arizona state court custody determination. Although the Ohio Court did not address custody matters, the Arizona Court awarded custody of the minor child, Aaron Catz, to Defendant Chalker. Federal courts should be particularly hesitant to interfere with state court custody decrees. For instance, in determining whether a state court has subject matter jurisdiction over a custody dispute, "a federal district court, in making its jurisdictional inquiry, would be required to review the state court's determination that it had subject-matter jurisdiction to issue the custody

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origin of the domestic relations exception to federal jurisdiction). In Barber, theplaintiff-wife sought to enforce a divorce decree awarded by a New York state court after her husband had fled the juroisdiction and filed divorce in a Wisconsin court alleging that the wife had abandoned him. Although the majority in Barber held that federal jurisdiction was proper, the dissent, which thought jurisdiction to be inappropriate, provided the basis for the current domestic relations exception. See,Anderbrandt, 504 U.S. at 700 (narrowing the domestic relatiuons exception but upholding the continuing validity of the exception as described by the dissent in Barber).

determination in question under its own laws. Such an intrusion into state court systems clearly is unwarranted absent affirmative congressional action sanctioning such an intrusion." Evans, 668 F. Supp. at 646 n. 16 (emphasis in original). The same sort of inquiry must be made in this case into the Arizona Court's actions and procedures in connection with its pleadings, notices, hearings and decrees.

Not only would the Court's exercise of jurisdiction over this case impermissibly interfere with the Arizona Court's judgment, it may result in incompatible federal and state decrees. Brown, 747 F.2d at 322 (noting the undesirability of "incompatible federal and state court decrees") (quoting Crouch, 556 F.2d at 487); Karlson, 1993 WL 616447 at *1 (same). If as Plaintiffs requestion, the Court declares the Arizona Court's judgment invalid, the Court's ruling would be in direct conflict with the Arizona Court's order relating to the parties' marital status, custody rights, support obligations, and division of property.

The fact that Plaintiffs have framed their Complaint in terms of constitutional violations does not alter the Court's conclusion that jurisdiction would be inappropriate. it is well established that principles of comity warrant dismissal even where a party alleges that a state court domestic proceeding violated his or her constitutional rights. Bennett, 1992 WL 357026 at *1 (holding no subject matter jurisdiction where the plaintiff claimed his constitutional rights were violated during state proceedings dissolving his marriage). For instance, in Edwards v. Goldberg, the Plaintiff alleged that he was not afforded due process notice and a hearing before the state court ordered that his disability and pension benefits be garnished to provide his former spouse child support payments. 1985 WL 12793, No. 847728 at *1 (6th Cir. Oct. 7, 1985), cert. denied, 475

U.S. 1123 (1986). In dismissing the claim, the Sixth Circuit stated that "it is clear that the federal courts generally lack jurisdiction to review domestic relations matters like this one which would require the federal courts to review Plaintiff's divorce decree, the status of his former wife and children, and the legality of the state process." Id. at *1 (citing cases).

Furthermore, the Court's conclusion is not altered by the fact that the alleged constitutional violation may have arisen from Chalker's alleged deceptive behavior. According to Plaintiffs, Defendant Chalker and her attorneys concealed the existence of the prior Ohio divorce decree from the Arizona Court.[7] However, in Brown v. Hammonds, 747 F.2d 320, the Fifth Circuit considered whether the federal court's decision to dismiss a suit for want of subject matter jurisdiction that arose from a domestic dispute was proper where the plaintiff alleged that the wife concealed from the court the existence of an antenuptial agreement. Id. at 322. Despite the allegations of misconduct on the part of the wife, the Court held that the Plaintiff's claims fell clearly within the domestic relations exception. Id. Similarly, an assertion that Defendant Chalker engaged in misconduct, even if that misconduct may have resulted in an incorrect ruling by the state court, does not alone confer jurisdiction on a federal district court.

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[7]The naked allegations by Plaintiff concerning the lack of notice of the Arizona state court proceedings, calloused treatment, collusion, unilateral hearings, and draconian measures taken in his absence are shocking. Apparently, Plaintiff has never had a hearing on the merits of his claims. He did not appeal the state court judgment, and his prior law suit in the United States District Court were dismissed.

In addition to the fact that the domestic relations exception and the accompanying comity principles warrant dismissal, it is clear that the Court does not have jurisdiction under the Rooker-Feldman doctrine. the Rooker-Feldman doctrine was developed form two Supreme Court cases, Rooker v. Fidelity Trust, Co., 263 U.S. 413 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). In each case, the Supreme Court considered whether a federal district court could exercise jurisdiction to determine the validity of a state court judgment. The Supreme Court held federal district courts "do not have jurisdiction ... over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional. Review of those decisions may be had only in [the United States Supreme Court]." Feldman, 460 U.S. at 486 (citing 28 U.S.C. § 1257). As the Supreme court stated, "[t]he jurisdiction possessed by the District Courts is strictly original." Rooker, 263 U.S. at 415-416 ("If the constitutional questions stated in the will actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction."). See also Keene Corp. v. Cass, 908 F.2d 293, 296 (8th Cir. 1990) ("Federal courts with the exception of the United States Supreme Court, do not possess appellate jurisdiction over state court proceedings."); Claughton v. Donner, 771 F.Supp. 1200, 1204 (S.D. Fla. 1991) (citing cases) (holding "[A] federal district court may not review a state court judgment even upon a claim that the judgment violates the United States Constitution. The remedy for such a violation is an appeal to the state appellate courts, whose decision may be reviewed by the United States Supreme Court.").

It is clear that the Rooker-Feldman doctrine applies even where the plaintiff alleges that his or her constitutional rights have been violated. For instance, in Wijas v. Nelson, 1994 WL 117988, No. 92-3606 (7th Cir. April, 5, 1994), the United States Court of Appeals for the Seventh Circuit held that the Rooker-Feldman doctrine warranted dismissal where the Plaintiff alleged violations of constitutional rights under the First, Fourth, Fifth, Sixth, Eight, Ninth and Fourteenth Amendments and sought injunctive relief to enjoin sale of his home. Id. The Court held dismissal was warranted because the appropriate relief was appellate review in the state court system and then writ of certiorari to the United States Supreme Court. Id.; see also Ritter v. Ross, 922 F.2d 750, 754 (7th Cir. 1993) (holding that artificial attempts to redefine a claim as a due process violation were insufficient to cast jurisdiction upon the district court where the plaintiffs were really requesting appellate review of the state court's decision; Keene, 908 F.2d at 297 (holding that Rooker-Feldman doctrine applies where a litigant attempts to circumvent the requirement of seeking direct review in the United States Supreme Court "by casting her lawsuit as a section 1983 action") (citations omitted). Furthermore, the doctrine applies even where the alleged constitutional violations arose from deficiencies in the state court proceedings themselves. For instance, in Fariello v. Campbell, 860 F.Supp. 54 (E.D.N.Y. 1994), the United States District Court for the Eastern District Court of New York considered whether a federal court could exercise jurisdiction over a plaintiff's claims that the state family court violated the Plaintiff's constitutional rights during a contempt proceeding. Among his various allegations of constitutional violations committed by the family court, the plaintiff contended that he was denied an

appeal by being immediately brought before the judge without an opportunity to respond and review the findings that held him in contempt. Id. at 65. In holding that the district court had no jurisdiction to consider the plaintiff's claims, the Court reasoned that "[a]ny constitutional error committed by the Family Court in [the plaintiff's] contempt proceeding, whether in the interpretation of statutes or procedurally, is a matter for the state appellate courts to review, or the United States Supreme court if it grants certiorari." Id. at 67; see also Bennett, 1992 WL 357026 at *1 (holding that the federal court had no subject matter jurisdiction where the plaintiff alleged that his constitutional rights were violated in state divorce proceedings).

In order for the Rooker-Feldman doctrine to apply to a claim presented in federal district court, the issue before the Court must be "'inextricably intertwined' with the claim asserted in a state court proceeding." Keene, 908 F.2d at 296 (quoting Feldman, at 482 n. 16)). A claim is inextricably intertwined with a state court judgment "only to the extent that the state court wrongly decided the issues before it. Where federal relief can be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment." Wijas, 1994 WL 117988, at *2 (quoting Keene, 908 F.2d at 296-97). See also Fariello, 860 F.Supp. at 65 ("If ... the ...suit challenges the decision of the state court on the grounds that the state court's interpretation of a statute was unconstitutional, or that the state court committed a constitutional error in arriving at its decision, the federal court does not have subject matter jurisdiction to hear the case.") (citing cases). Thus, if the plaintiff is requesting that the Court determine that a state court's judgment or

decree was incorrect, the Rooker-Feldman doctrine is implicated.

Once it has been determined that the relief requested requires a federal district court to determine whether a state court's ruling was incorrect, the Court must next determine whether the Plaintiff's claim constitutes a general or specific grievance. In particular, a district court has jurisdiction to hear general challenges to state procedures and laws. However, they do not have jurisdiction over challenges arising out of particular cases even where those challenges allege that the state court's action was unconstitutional. Feldman, 460 U.S. at 486. As explained by the court in Fariello:

> [T]he Rooker-Feldman doctrine has come to mean that, if the [suit] challenges a rule or statute relied upon by the state court on the grounds that the rule or statute is itself unconstitutional, the federal court has the subject matter jurisdiction to hear the case. ... If, however, the [suit] challenges the decision of the state court on the grounds that the state court's interpretation of a statute was unconstitutional, or that the state court committed a constitutional error in arriving at its decision, then the federal court does not have jurisdiction to hear the case.

Fariello, 860 F.Supp. at 66 (citing cases).

Plaintiffs' claim clearly requests this Court to make a determination that the ruling by the Arizona Court was incorrect. The Arizona Court found that the Ohio Court divorce decree was not entitled to full faith and credit. Plaintiffs have requested that this Court declare that the

Ohio decree is entitled to full faith and credit, a ruling which necessitates a finding that the Arizona Court's ruling was incorrect. Plaintiffs further request that the Court find that the Arizona Court violated their rights under the Due Process Clause of the Fourteenth Amendment by failing to give Plaintiffs adequate notice of state court proceedings and failing to join Plaintiffs Shawn and Jason Catz in those proceedings. Again, the gravamen of Plaintiffs' claim is that the Arizona Court ruling was erroneous because of the procedural mistakes allegedly committed by that court.

Finally, the Plaintiffs request that Defendant Financial Institutions be enjoined from transferring any property titled in the name of Plaintiffs. The granting of such a request would clearly require a finding by this Court that the Arizona Court's decree as it pertains to the distribution of the marital assets was incorrect. Accordingly, it is clear that Plaintiffs' claims implicate the Rooker-Feldman doctrine.

Not only is it clear that Plaintiffs seek a determination by this Court that the Arizona Court's ruling is erroneous, the grounds upon which they base this claim constitute a specific grievance over which this Court cannot exercise its jurisdiction. Plaintiffs have not alleged a general constitutional violation over which this Court may exercise its jurisdiction. Plaintiffs have not alleged that the state law notice requirements are unconstitutional. Nor have Plaintiffs alleged that the rules governing joinder of third parties to divorce proceedings are unconstitutional. Rather, Plaintiffs' principal grievance is that the Arizona state court failed to follow proper procedural and legal requirements and by doing so, it denied him a fair hearing and violated their constitutional rights to due process. As such,

Plaintiffs' claim constitutes a specific grievance which this Court is precluded from reviewing.[8]

In addition to requesting that the divorce decree be declared null and void, Plaintiffs request the Court to enjoin Defendant Financial Institutions from transferring property in accordance with the Arizona Court's decree. Of course, if the Court is unable to review the Arizona Court's marital dissolution decree, then the Court cannot enjoin Defendant Financial Institutions' action on the basis of its invalidation of the divorce decree. Moreover, injunctive relief involving property matters would impermissibly interfere with state court proceedings and would create the friction between state and federal bodies. As noted by the Sixth Circuit, "traditional notions of comity ... [require] that, as between state and federal courts, jurisdiction must be yielded to the Court that first acquires jurisdiction over the

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[8]Furthermore, although the violations alleged by Plaintiffs are egregious, this does not change the conclusion that this Court cannot consider the claims. In Feldman, the Supreme Court held that federal district was clearly without jurisdiction to consider claims even though the Plaintiffs alleged that the state court had "acted arbitrarily and capriciously". Feldman, 460 U.,S. at 486. Thus, although plaintiffs may feel deeply wronged by the alleged unconstitutional actions of the Arizona Court, the proper relief for their claims is appellate review in the state court system and then writ of certiorari to the United States Supreme Court.

property ... not only where property is judicially seized, but in all cases where 'to give effect to it jurisdiction, the court must control the property.'" In re Washington, 623 F.2d 1169, 1172 (6th Cir. 1980), cert. denied, 449 U.S. 1101 (1981).

Plaintiffs further claim that the Court may properly exercise jurisdiction under ERISA. However, it is clear that the principles of comity under the domestic relations exception as discussed above apply even where the issues are framed in terms of an ERISA violation. See Reyer v. Trust Annuity Plan for Pilots of Trans World Airlines, Inc., 891 F.Supp. 591, 593 (M.D. Fla. 1995) (holding district court did not have subject matter jurisdiction to consider a claim where a party requests a determination of his rights under an ERISA plan following a state court divorce proceeding); Eichelberger v. Eichelberger, 584 F.Supp. 899, 901 (S.D. Tex. 1984) (same). Although Section 1056 of ERISA grants the federal court concurrent jurisdiction with the state courts, Clark v. Superior Court of District of Columbia, 702 F.Supp. 4, 8 (D.D.C. 1988), in order to declare who is entitled to benefits under an ERISA plan, the Court would be required "to involve itself unnecessarily in this state court divorce proceeding, which is comprehensively and exclusively regulated by [state] laws. ... [T]he exercise of jurisdiction by the Court would constitute an unwarranted intrusion into state affairs." Eichelberger, 584 F.Supp. at 901.

Finally, the Court does not have jurisdiction to consider any supplemental state law claims asserted by Plaintiffs. As noted above, the Court lacks subject matter jurisdiction to consider Plaintiffs' claims based on the domestic relations exception and the accompanying principles of comity, and based on the Rooker-Feldman doctrine. As all of Plaintiffs'

federal claims have been dismissed, the Court declines to exercise supplemental jurisdiction over any remaining state law claims. See 28 U.S.C. § 1367 (c) (3). Accordingly, Defendant's Motion to Dismiss is hereby GRANTED in its entirety.

Both parties have also addressed the issue of whether the Court has personal jurisdiction over Defendant Chalker. However, since the Court determined it does not have subject matter jurisdiction to consider Plaintiffs' claims, it is unnecessary to determine whether the Court may exercise personal jurisdiction over Defendant Chalker.

For the foregoing reasons, Defendant's Motion to Dismiss is GRANTED, and this cased is hereby DISMISSED. In light of the Court's ruling on Defendant's Motion to Dismiss, all remaining Motions are hereby DENIED as MOOT.

ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

Appendix 2

IN THE COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
CUYAHOGA COUNTY, OHIO

ROBERT S. CATZ, Plaintiff) CASE NUMBER: D 191073
)
) JUDGE STANLEY M. FISHER
VS.)
)
SUSAN R. CATZ,) JUDGMENT ENTRY
Defendant)

This case came on for Trial on April 18, 1989 before the Honorable Stanley M. Fisher. The hearing was conducted upon the Complaint for Divorce of the Plaintiff, the Defendant being in default of answer. Both parties were duly served with process according to law. Plaintiff presented evidence, corroborated by a witness, relative to the averments contained in his Complaint for Divorce.

Upon due consideration of the Complaint for Divorce and the evidence presented at the time of the Trial, this Honorable Court finds that: Plaintiff was a resident of Cuyahoga County, Ohio, for a continuous period in excess of six (6) months immediately preceding the filing of his Complaint for Divorce; the parties were married as alleged in Washington, D.C., on April 13, 1980; and, one (1) child was born as issue of this marriage, namely Aaron Catz, age eight (8).

This Honorable Court further finds that Plaintiff and Defendant have lived separate and apart without cohabitation for a period of time in excess of one (1) year, thereby entitling Plaintiff to an absolute divorce.

This Honorable Court further finds that: the parties did not own real property in the State of Ohio which constitutes martial assets; the parties have not established any joint residence in the State of Ohio; the parties have not intermingled personal, tangible and/or intangible property since the time of their marriage; Plaintiff has taken possession of only his personal property located in the State of Ohio, which consists of clothing, toiletries, books, files and other supplies that are inherent in the practice of his profession; and, Defendant has in her possession her personal property.

This Honorable Court further finds that: according to Ohio Revised Code Section 3109.23, the Court does not have jurisdiction to determine custody and visitation rights regarding the child of this marriage because the child has no significant connection with the State of Ohio and has been residing with his mother in the State of Florida; this Court is not the proper forum to determine matters of child support because the appearance of the defaulting Defendant is necessary to the just adjudication of the issue; and, the forum state exercising jurisdiction over the child of this marriage should apply its own substantive law related to support.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. Plaintiff is hereby granted a divorce from Defendant and the marriage contract heretofore existing between the parties is hereby dissolved and set aside;

2. Neither party is entitled to alimony;

3. Plaintiff shall retain possession of and have sole and exclusive rights to his personal property located in the State of Ohio;

4. Defendant shall retain possession of and have sole and exclusive rights to her personal property which is presently in her possession; and,

5. Plaintiff shall pay the costs of this proceeding for which judgment is rendered and execution may issue.

JUDGE STANLEY M. FISHER

Appendix 3.

ARIZONA SUPERIOR COURT, PIMA COUNTY

Petitioner	)	
SUSAN RUTH CHALKER	)	NO. D-103065
	)	
	)	PRELIMINARY INJUNCTION
Respondent	)	AGAINST BOTH
ROBERT STEVEN CATZ	)	
		PETITIONER AND RESPONDENT

WARNING. THIS IS AN OFFICIAL COURT ORDER. IF YOU DISOBEY THIS ORDER THE COURT MAY FIND YOU IN CONTEMPT OF COURT. YOU MAY ALSO BE ARRESTED AND PROSECUTED FOR THE CRIME OF INTERFERING WITH JUDICIAL PROCEEDINGS AND ANY OTHER CRIME YOU MAY HAVE COMMITTED IN DISOBEYING THIS ORDER.

YOU OR YOUR SPOUSE MAY FILE A CERTIFIED COPY OF THIS ORDER WITH THE PIMA COUNTY SHERIFF. A CERTIFIED COPY MAY BE OBTAINED FROM THE CLERK OF THE COURT THAT ISSUED THIS ORDER. IF YOU ARE THE PERSON THAT BROUGHT THIS ACTION, YOU MUST ALSO FILE EVIDENCE WITH THE SHERIFF THAT THIS ORDER WAS SERVED ON YOUR SPOUSE.

THIS COURT ORDER IS EFFECTIVE UNTIL A FINAL DECREE OF DISSOLUTION OR LEGAL SEPARATION IS FILED OR THE ACTION IS DISMISSED.

IT IS ORDERED that during the pendency of this action YOU, PETITIONER AND RESPONDENT NAMED ABOVE, as parties to this action, are enjoined from and shall not:

(a) Transfer, encumber, conceal, sell or otherwise dispose of any of the joint, common or community property of the parties, except in the usual course of business or for necessities of life, without the written consent of both parties or permission of the court;

(b) Molest, harass, disturb the peace of, or commit an assault or battery on the person of your spouse (petitioner or respondent) or any natural or adopted child of the both parties, and

(c) Remove from the State of Arizona any natural or adopted child of the parties presently residing in the State of Arizona without prior written consent of both parties or permission of the court.

IT IS FURTHER ORDERED that this injunction is effective against both parties to this action. If you are the petitioner, the injunction is effective upon filing the petition for dissolution or legal separation. If you are the respondent, this injunction is effective upon being served with, or accepting service of, a copy of this injunction upon you.

IT IS FURTHER ORDERED that this injunction has the same force and effect of an order of the Superior Court signed by a judge and is enforceable by all remedies made available by law, including contempt of court.

Issued by my hand and seal of this court this day of **November 4, 1994**.

Annette Everlove
BUTLER & STEIN, P.C.
110 S. Church, Ste. 9300
Tucson, AZ 85701
(602) 628-1618
Computer No.: 17238

JAMES N. CORBETT
Clerk of the Court

By: **Larry Richards**
Deputy Clerk

Appendix 4

Annette Everlove, Esq.
BUTLER & STEIN, P.C.
110 South Church Ave.
Suite 9300
Tucson, Arizona 85701
(602) 628-1618
Pima County Computer No. 17238

and

Leonard I. Karp, Esq.
KARP & WEISS, P.C.
33 N. Stone Avenue
Suite 1800
Tucson, Arizona 85701-1415
Pima County Computer No. 30244

Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

In re the Marriage of:	)	
	)	
SUSAN RUTH CHALKER,	)	NO. D-103065
	)	
Petitioner	)	TEMPORARY RESTRAINING ORDER WITHOUT NOTICE
and	)	
	)	
ROBERT STEVEN CATZ, et al.	)	
	)	
Respondent.	)	
	)	

It clearly appearing from the specific facts shown by Petitioner's verified Amended Petition for Dissolution and the affidavits submitted in support of Petitioner's Application for Temporary Restraining Order on file in this proceeding that immediate and irreparable injury will result to the moving party if no order is issued before the time for responding has elapsed and before the adverse party or his attorneys can be heard in opposition. One of the applicant's attorney having certified to the Court in writing the reasons supporting the claim that notice should not be required and it appearing to the Court that the injury defined is irreparable because absent a temporary restraining order

prohibiting the payment, withdrawal or disbursement of funds, stocks or other property from **ANY ACCOUNTS IN THE NAME OF RESPONDENT AND/OR PETITIONER AND/OR RESPONDENT'S CHILDREN OR IN WHICH RESPONDENT HAS AN INTEREST, NO MATTER HOW DENOMINATED AND WHEREVER LOCATED**, Respondent will remove assets belonging to the community or in which the community has an interest from the Court's jurisdiction, or take other action violative of A.R.A. § 25-315.

IT IS THEREFORE ORDERED that **RESPONDENT** is enjoined and prohibited from payment, withdrawal and/or disbursement, in any manner whatsoever, of any funds, stocks, bonds, notes or other property, however it may be denominated and where, which may be in his possession and/or control and titled in the names of **ROBERT STEVEN CATZ,** DOB: 03/07/44, SSN: 560-58-1390; **SUSAN RUTH CHALKER**, DOB: 04/30/42, SSN: 071-34-6540; and/or Respondent's children, **SHAWN DAVID CATZ** (DOB: 12/28/68, SSN: 591-01-3116); and/or **JASON ALAN CATZ** (DOB: 07/04/73), SSN: 591-01-2528); and/or **AARON MICHAEL CATZ** (DOB: 10/15/80, SSN: 593-62-0570); or in which Respondent has an interest whatsoever, no mater how denominated and wherever located.

IT IS FURTHER ORDERED that this Order be filed forthwith in the office of the Clerk of the Superior Court and entered of record and that the moving party serve a copy of this Temporary Restraining Order, the First Amended Petition for Dissolution of Marriage, the Ex Parte Motion to Add Parties and for Issuance of Temporary Restraining Order Without Notice, and the supporting affidavits forthwith upon any party to whom this order is

directed and upon any other party or attorney who has appeared in this action in accordance with Rule 5, Arizona Rules of Civil Procedure.

This Order shall issue without bond and shall continue in force and effect until further order of the Court.

DATED this lst day of December, 1994.

/S/ Michael Alfred
Judge
Pima County Superior Court

Appendix 5.

Filed 12/14/94

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

In Re Marriage of	)	
SUSAN RUTH CHALKER,	)	
Petitioner,	)	No. D-103065
VS.	)	
ROBERT S. CATZ,	)	
Respondent.	)	
	)	

RESPONDENT'S EMERGENCY MOTION TO DISMISS PETITION FOR DISSOLUTION OF MARRIAGE

Respondent Robert S. Catz, pro se hereby moves to dismiss this case for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Arizona Rules of Civil Procedure. In support of this motion, respondent avers:

1. The parties were married in Washington, D.C. on April 12, 1980.

2. The parties were divorced on April 10, 1989, by decree of the Cuyahoga County Court of Common Pleas, Cleveland, Ohio, upon the following findings: (1) there was proper service on defendant Susan R. Catz, (*aka* Susan R. Chalker); (2) neither party was to be awarded alimony; (3) Robert s. Catz was entitled to keep all of his real and personal property located in the State of Ohio; (4) Susan R. Catz was entitled to keep all personal property in her possession in the State of Florida; and, (5) since the child the issue of the marriage had no significant contacts with the State of Ohio, the Court could not issue any order

relating to child custody and child support. A true and correct cop of the decree of divorce is attached as "Exhibit A."

3. The parties have not remarried.

4. The decree of divorce granted Robert S. Catz on April 10, 1989, by the Cuyahoga County Court of Common Pleas, Cleveland, Ohio, shall be given full faith and credit by this Honorable Court pursuant to Article IV, Section 1, United States Constitution and 28 U.S.C. § 1738.

5. The instant action is barred by laches, waiver, and estoppel, as petitioner Susan Chalker waited more than five and one-half years after entry of the Ohio decree of divorce before bringing her action for separate maintenance and division of property.

6. Petitioner and petitioner's counsel have failed to disclose to this Honorable Court the existence of a prior state court judgment granting the undersigned respondent a divorce and dissolution of all issues regarding alimony and equitable separation of property.

7. In that this court has issued an ex parte Order upon petitioner's motion seizing all of respondent's assets, respondent will be irreparably harmed if the instant emergency motion is not granted, in that: (1) businesses that he operates will have to cease operations immediately and will be shut down; (2) vendors and other creditors will not be paid, and will refuse to do business with respondent; (3) respondent will be able to pay his apartment rent and other personal obligations (4) respondent will not be able to pay child support, which he voluntarily pays without court order in the amount of $825.00 each and every month (a fact which was not disclosed by petitioner and petitioner's counsel in their moving papers to this Court).

WHEREFORE, respondent respectfully requests that this Honorable Court dismiss the Susan Ruth Chalker's Petition for Dissolution of Marriage.

Respectfully submitted,

Robert S. Catz

Respondent, Pro Se

Appendix 6.

Filed 12/14/94

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF PIMA

In Re Marriage of	)	
SUSAN RUTH CHALKER,	)	
Petitioner,	)	No. D-103065
VS.	)	
ROBERT S. CATZ,	)	
Respondent.	)	
	)	

ORDER

AND NOW, this 14 day of December, 1994, upon respondent's filing of a Emergency Motion to Dismiss Petition for Dissolution of Marriage, and upon good cause being shown, this Court sets this matter for an emergency hearing in Courtroom **TBA**, Pima County Superior Court, on December 19, 1994, at 8:30 o'clock a.m.

/s/Joseph R. McDonald

BY THE COURT:

12-14-94

Appendix 7.

Filed Feb 6, 1995

ARIZONA SUPERIOR COURT, PIMA COUNTY

JAMES CORBETT, Clerk

M. Drum Deputy

Judge: HON. JOSEPH R. McDONALD CASE NO. D-103065

Pro Tempore

Court Reporter: Dierdre Muzall DATE 6 February 1995

IN RE THE MARRIAGE OF

SUSAN RUTH CHALKER, Petitioner

ROBERT STEVEN CATZ

Respondent.

EVENT SUMMARY

Type: Mot/Continue OSC Result: Granted/Cont
Date: 14Mar95 Time: 9:00 am Length: 1 day Div: A Req: Type: OSC
Result: Vacate
Date: 16Feb95 Time: 9:00 am Length: 1 day Div: A Req:
Type: Result:
Date: Time: Length: Div: Req:
Type: Result:
Date: Time: Length: Div: Req:

MINUTE ENTRY

HEARING ON PETITIONER'S MOTION TO CONTINUE ORDER TO SHOW CAUSE (PRE DECREE)

Petitioner present, Respondent not present.

Ms. Everlove makes statements to the Court RE continuance of the Order to Show Cause hearing, citing remand from Federal court.Petitioner, Petitioner's supervisor, and a witness having to be out of town for business on 16 February 1995, and requests a continuance to early March.

Ms. Everlove further advises the Court of Petitioner's difficulty in obtaining a solitary address for Respondent, his

refusal to honor discovery requests, her belief that Respondent is hiding assets, and requests sanctions if Respondent does not appear and comply with the subpoena for his disposition, duces tecum, and further requests Petitioner be allowed to endorse and negotiate an insurance check which is reimbursement for Petitioner's vehicle, recently involved in an accident.

IT IS ORDERED Petitioner's Motion for Continuance of the Order to Show Cause is GRANTED.

IT IS FURTHER ORDERED CONTINUING the hearing to 14 March 1995 at 9:00 a.m. for one (1) day and VACATING the hearing currently set for 16 February 1995.

IT IS FURTHER ORDERED Respondent, Robert Steven Catz, shall provide opposing counsel and the Court with a single address where he will henceforth receive all process, pleadings, notices, and the like. Said address shall remain as his service address until changed by order of this Court.

IT IS FURTHER ORDERED Respondent, Robert Steven Catz, will participate in discovery in accordance with the rules of this Court, specifically, he shall appear for and participate in his deposition currently scheduled for 9 February 1995. In the event he fails to do so, Mr. Catz is admonished that he will be subject to sanctions, which may include striking his response and other pleadings in this matter.

IT IS FURTHER ORDERED Petitioner's request for permission to endorse the reimbursement check from GEICO Insurance is DENIED for the reason that the Court is not in a position to grant such a request.

The Court signs this minute entry in lieu of a formal order.

FILED IN COURT: Petitioner's Notice of Filing.

Hon. Joseph R. McDonald

M. Drum
Deputy Clerk

cc: Hon. Joseph R. McDonald
Annette Everlove (Butler & Stein)
Leonard I. Karp (Karp & Stolkin)
Robert S. Catz, 1402 17th Ave #B, Nashville, TN, []

Appendix 8.

ARIZONA SUPERIOR COURT, PIMA COUNTY

10 March 1995
JAMES CORBETT, Clerk
M. Druan Deputy

[Judge] Pro Tempore JOSEPH R. McDONALD CASE NO. D-103065

[Court] Reporter: None DATE March 2, 1995

[IN RE] THE MARRIAGE OF

[SUSAN] RUTH CHALKER
Petitioner,

[and]

[ROBERT] STEVEN CATZ, ( )
Respondent

EVENT SUMMARY

Type: Under Advisement Ruling		Result:		
Date:	Time:	Length:	Div:	Req:
Type:			Result:	
Date:	Time:	Length:	Div:	Req:
Type:			Result:	
Date:	Time:	Length:	Div:	Req:
Type:			Result:	
Date:	Time:	Length:	Div:	Req:

MINUTE ENTRY

UNDER ADVISEMENT RULING
RE: PETITIONER'S MOTION FOR SANCTIONS

The Court has heard the arguments of counsel for petitioner, respondent not appearing in person or by counsel, and finds as follows:

1. Respondent was served with the summons, amended petition for dissolution and various other documents described in the return of service on December 14, 1994 in Tucson, Pima County, Arizona. The documents with

which respondent was then served included uniform interrogatories and a request for production of documents.

2. On the same date, December 14, 1994, respondent filed his emergency motion to dismiss the amended petition. Petitioner has filed her written opposition to this emergency motion. The emergency motion had as respondent's address the same address where he was served earlier in the day.

3. On December 19, 1994, respondent filed a petition and notice of removal of this dissolution proceeding to the United States District Court for the District of Arizona at Tucson. The basis alleged by respondent in the petition for removal was that the dissolution petition file din this court represented an attack on the constitutional validity of an Ohio decree of divorce entered April 10, 1989. The matter was remanded to this court by the U.S. District Court, Marquez, J.

4. On December 22, 1994, respondent was noticed for deposition on January 3, 1995. Because of the removal and subsequent remand, the deposition was reset for February 9, 1995, and the notice was issued January 24, 1995.

5. Since December 14, 1994, respondent has apparently moved from Tucson and has failed to provide the court or opposing counsel with a current address as he is required to do under Rule 12(a), Uniform Rules of Practice for the Superior Court. As a consequence, counsel for petitioner has been required to send copies of pleadings to respondent at five different addresses.

6. On February 6, 1995, by minute entry order, respondent was directed to provide opposing counsel and the court with a single address where he will henceforth receive all process, pleadings and notices. Respondent has failed to do so.

7. In the same minute entry order, respondent was directed to appear for his deposition on February 9, 1995. Again, respondent has failed to comply.

8. Respondent has not answered uniform interrogatories served upon him on December 14, 1995, nor has he produced the documents set forth in the request for production similarly served upon him on the same date.

9. Respondent has failed to participate in discovery as required by the Arizona Rules of Civil Procedure and that failure is willful, deliberate and in bad faith. Respondent is subject to sanctions as set forth and permitted in Rules 16(f), 26(f) and 37(b), Arizona Rules of Civil Procedure.

10. Petitioner is entitled to an award of all fees and costs associated with respondent's failure to comply with discovery requests.

THEREFORE, IT IS ORDERED:

1. Respondent is in contempt of the Court's orders regarding discovery.

2. Respondent is subject to sanctions and will be sanctioned in accordance with Rules 16(f), 26(f) and 37(b), Arizona Rules of Civil Procedure.

3. Petitioner is awarded her fees and costs associated with respondent's failure to comply with discovery. Ms. Everlove will submit the appropriate affidavit.

4. As a sanction, the default of respondent, Robert Steven Catz, is herewith entered. The hearing currently set on petitioner's OSC on March 14, 1995 shall be limited to entry of a default judgment pursuant to Rule 55(b), Arizona Rules of Civil Procedure.

The Court signs this minute entry in lieu of a formal order.

_____

Joseph R. McDonald

Judge Pro Tempore

Copies to: Hon. Joseph R. McDonald
Annette Everlove, Esq.
Leonard Karp, Esq.
Robert S. Catz, c/o Shawn D. Catz, 1402 17th Ave #B, Nashville, TN 37212
Under Advisement Clerk
Court Administrator

Beth Hoover/lf
Deputy Clerk

Appendix 9.

Annette Everlove, Esq.
BUTLER & STEIN, P.C.
110 South Church Ave.
Suite 9300
Tucson, Arizona 86701
(602) 628-1618
Pima County Computer No. 17238

and

Leonard Karp, Esq.
KARP & WEISS, P.C.
33 N. Stone Ave.
Suite 1800
Tucson, Arizona 85701
(602) 882-9705
Pima County Computer No. 30244

Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

In re the Marriage of:

SUSAN RUTH CHALKER, No. D-103065

Petitioner,

and

ROBERT STEVEN CATZ, Assigned to Judge McDonald

Respondent,
Additional Parties.

DECREE OF DISSOLUTION OF MARRIAGE

This matter coming on regularly to be heard before the Court on March 14, 1995, and Petitioner being present in person and through her attorneys, Annette Everlove and Leonard Karp; the Respondent not appearing; this Court having acquired jurisdiction over the Respondent on December 14, 1994 by personal service upon him of the Amended Petition for Dissolution, Summons, Preliminary Injunction, and other pleadings, all as set forth in that certain Affidavit of Return of Service dated December 15, 1994; Respondent not having responded to Petitioner's Request for Production of Documents served upon him on December 14, 1994; Respondent not having answered Uniform Domestic Relations Interrogatories served upon him on December 14, 1994; Respondent failing to attend his deposition duces tecum scheduled for February 9, 1995; Respondent failing to obey this Court's Minute Entry Order dated February 6, 1995, and having been found in contempt of Court, all as set forth in this Court's Minute Entry Order dated March 2, 1995, and default against Respondent having been entered and evidence having been presented and considered, the Court finds as follows:

1. Petitioner and Respondent were domiciled in the State of Arizona for at least ninety days prior to the filing of the Petition for Dissolution of Marriage.

1. Petitioner and Respondent were domiciled in the State of Arizona for at least ninety days prior to the filing of the Petition for Dissolution of Marriage.

2. Any judgment on the divorce purportedly heretofore obtained by Respondent against Petitioner in the State of Ohio, County of Cuyahoga, is null and void having been fraudulently obtained and further this Court shall not give full faith and credit to said judgment.

3. The conciliation provisions of A.R.S. § 25-381, as amended, either do not apply or have been met.

4. The marriage of the parties is irretrievably broken with no reasonable prospect of reconciliation.

5. There is one minor child the issue of this marriage, to wit: Aaron Michael Catz, date of birth October 15, 1980

6. To the extent it has jurisdiction to do so, this Court has considered, approved and made provision for the custody and support of the parties' minor child, maintenance and support of the parties, division of community and other joint or common debts, obligations and property of the parties.

7. Petitioner shall have sole legal and physical custody of the parties' minor child with such visitation in Respondent as Petitioner, in her sole discretion, deems appropriate.

8. Respondent has been employed as a professor of law from 1979 until approximately 1993, first at Cleveland Marshall School of Law and later at District of Columbia School of Law, and the Court attributes income to him based upon income earning ability of $73,000.00 per annum.

9. Petitioner shall be entitled to an award of child support pursuant to Arizona Child Support Guidelines as set forth in the Child Support Order and Order of Assignment

submitted herewith and signed by the Court this date. Said child support award shall be effective January 1, 1995 with no offset in Respondent for any sums paid to date.

10. Petitioner satisfies the statutory requirements of A.R.S. § 25-319(A) and is in need of, and entitled to, an award of spousal maintenance, in that Petitioner lacks sufficient property, including property awarded herein, to provide for her reasonable needs and has, at Respondent's urging, become a contract elementary school teacher with no tenure, nor tenure possibility with her present employer.

11. During the pendency of these proceedings, Petitioner sustained an insurable loss on her automobile in the sum of $4,800.00 which Respondent's conduct has precluded Petitioner from collecting.

12. Respondent has secreted, dissipated and/or otherwise failed to account for substantial community funds and assets.

13. The terms of this Decree are fair and equitable given the Court's finding of Respondent's dissipation, secreting and/or failure to account for marital assets.

NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The marriage previously existing between the parties is dissolved.

2. Petitioner shall have sole legal and physical custody of the parties' minor child, Aaron Michael Catz, with such visitation in Respondent as Petitioner, in her sole discretion deems appropriate.

3. Respondent shall pay to Petitioner as and for child support the sum of $700.00 per month commencing January 1, 1995 pursuant to the Child Support Order signed this date.

4. Petitioner shall be entitled to claim Aaron as a dependent for income tax purposes for tax year 1994 and all years subsequent thereto.

5. Respondent shall pay to Petitioner as and for spousal maintenance the sum of $1,000.00 per month commencing January 1, 1995.

6. Petitioner is awarded as her sole and separate property all right, title and interest in and to the following investments, bank and/or retirement accounts:

A. Fidelity Latin American Fund (7,926.390 shares valued at $92,659.49 as of January 17, 1995);

B. Fidelity Southeast Asia Fund (15,644.564 shares valued at $186,639.64 as of January 17, 1995);

C. Fidelity U.S. Government Reserves (balance unknown);

D. Waterhouse Securities, Inc., account no. 301-10632 (approximate value as of February 22, 1995 - $120.00);

E. Waterhouse Securities, Inc., IRA-SEP account no. 301-10633 (approximate value as of February 22, 1995 - $1,410.00);

F. Waterhouse Securities, Inc., IRA account no. 301-10634 (approximate value as of February 22, 1995 - $13,529.00);

G. CREF Retirement Annuity, certificate number Q866023-8, Global Equities Account (approximate value $10,116.71);

H. CREF Supplemental Requirement Annuities, certificate no. J091114-7, Global Equities Account (approximate value $424,055.24);

I. TIAA Transfer Payout Annuity, contract no. IE42653-2 approximate value $36,654.54);

J. Petitioner's State of Arizona Retirement (approximate value $230.00);

K. Petitioner's automobile 1989 Honda Accord;

L. All personal property in Petitioner's possession;

M. All bank accounts standing in Petitioner's name;

N. All bank accounts standing in Aaron's name.

7. As to those items set forth in ¶ 6 (G), (H) and (I) above, all right, title and interest shall be transferred to Petitioner by a Qualified Domestic Relations Order. The Court retains jurisdiction to enter such other QDRO's or other orders as are necessary to assure transfer to Petitioner of the property awarded to her hereunder.

8. Respondent is awarded all right, title and interest in and to his pension and/or retirement plan through the State of Ohio, current balance unknown.

9. The Court retains jurisdiction pursuant to A.R.S. § 25-318(B) to divide additional marital property which remains unknown by Petitioner and undisclosed by Respondent.

10. Respondent shall pay and hold Petitioner harmless from all debts of any kind or nature incurred by the parties during marriage, including all tax liability, whether incurred in his name, Petitioner's name or both names except for the following:

A. loan from Bernice Mennis to Susan Chalker in the principal sum of $7,300.00;

B. those certain credit card debts set forth in Petitioner's spousal affidavit dated November 4, 1994.

11. Judgment is entered in favor of Petitioner and against the Respondent in the sum of $4,800.00 as and for

maintenance accrued from January 1 to March 1, 1995 in the sum of $3,000.00.

13. Petitioner is entitled to payment of her attorneys' fees and costs incurred in this matter and judgment thereon shall be entered by this Court by separate judgment or order upon filing by counsel for petitioner of appropriiate affidavits pursuant to *China Doll, Inc. v. Schweiger.*

14. Interest shall run on all monies adjudged to be owing Petitioner from Respondent at the legal rate of interest from entry of judgment until paid in full.

DONE IN OPEN COURT this 14th day of March 1995.

_____

Honorable Joseph R. McDonald
Pima County Superior Court

Appendix 10.

Delivered by
Federal Express
3/29/95

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

In Re Marriage of	)	
SUSAN RUTH CHALKER,	)	
Petitioner,	)	No. D-103065
VS.	)	
ROBERT S. CATZ,	)	
Respondent.	)	
	)	

RESPONDENT'S MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Respondent hereby moves the Court for an Order permitting him to prosecute this case in forma pauperis as provided by Boddie v. Connecticut, 401 U.S. 371 (1969), and attaches an affidavit in support thereof.

Respectfully submitted,

Robert S. Catz
1402 17th Avenue
Nashville, Tennessee 37212
(615) 298-4706

Respondent, Pro Se

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

In Re Marriage of	)	
SUSAN RUTH CHALKER,	)	
Petitioner,	)	No. D-103065
VS.	)	
ROBERT S. CATZ,	)	
Respondent.	)	
	)	

AFFIDAVIT

COUNTY OF DAVIDSON) SS.
STATE OF TENNESSEE)

The respondent, Robert S. Catz, being first duly sworn, in support of his Motion for Leave to Proceed In Forma Pauperis states as follows:

1. that he is the respondent in this action;

2. that this action is a proceeding for divorce;

3. that he has less than $500.00 in available assets at his disposal, besides an automobile, wearing apparel and furnishings in storage;

4. that because of insufficient means he is unable to pay the costs of this action nor give security for the costs of this action.

Respectfully submitted,
Robert S. Catz, Respondent Pro Se

SUBSCRIBED AND SWORN before me, this 27 day of March, 1995.

_____
Notary Public

My Commission Expires on _____

CERTIFICATE OF SERVICE

I certify that on this 29th day of March, 1995, I caused to be served via first class U.S. Mail, postage prepaid, a true and correct copy of the foregoing Motion to Proceed In Forma Pauperis on counsel for the petitioner:

Leonard Karp, Esquire
Karp, Stolkin & Weiss, P.C.
1800 Bank of America Plaza
33 North Stone Avenue
Tucson, Arizona 85701
(602) 789-3339

_____
Robert S. Catz

Appendix 11.

Portion of Verified Petition for Special Action, Catz v. Chalker, et al, No. 2-CA-SA-00951 (Ariz. App. Div. Two filed April 1, 1996) at para. 43.

43. The effect of Judge Alfred's December 1, 1994 off-the-record ex parte temporary restraining order seizing all of petitioner's assets and subsequent orders issued by Commissioner McDonald and the refusal by the Clerk of the Superior Court to accept petitioner's pro per pleadings combined has:

(a) unconstitutionally denied petitioner the financial ability to defend himself with the assistance of retained compensated counsel in order to defend the action and participate in any meaningful way in the proceedings below. Martin v. Lauer, 686 F.2d 24, 32 (D.C. 1982) (while private litigants must ordinarily pay their own legal fees, they have an undeniable right to retain counsel to assert their legal rights); Potaschnick v. Port City, 609 F.2d 1101, 1117-19 (5th Cir. 1980);

(b) unconstitutionally denied petitioner the fundamental right to seek either full or joint custody of his minor son or to seek reasonable visitation. Santosky v. Kramer, 455 U.S. 745, 753 (1982); Smith v. Organization of Foster Families, 431 U.S. 816 (1977); Meyer v. Nebraska, 262 U.S. 390, 399 (1923). Commissioner McDonald made no effort to consider the views of petitioner's 15 year old son regarding these important matters nor did he apply *any* of the required statutory factors governing child custody determinations as required by A.R.S. § 25 322(a) (2).

Bailey v. Bailey, 412 P.2d 480 (Ariz. App. 1966). Further-more, petitioner was denied reasonable visitation rights without the specific findings required under A.R.S. § 25-337(A). Sholty v. Sherill, 632 P.2d 268 (Ariz. App. 1981). Nor were the views of petitioner's child ever considered on matters related to visitation Bryan v. Bryan, 645 P.2d 1267 (Ariz. 1982). as a result of the decree respondent Chalker has not allowed petitioner to have any visitation with his son who he has not seen since December, 1994.

(c) unconstitutionally deprieved [sic] petitioner of significant liberty and property interests without notice and opportunity to be heard, and that as a direct and proximate cause of the proceedings below petitioner has become homeless, has suffered extreme financial ruin, has been unable to financially support himself and his minor child, has been forced to give up his apartment in Tucson, which was located equidistant from his son's residence and school, has been forced to cease operation of his business in Tucson for want of operating capital, has been forced to place his belongings in storage which is now subject to a warehouseman's lien for non-payment of storage fees, has been unable to access his business records requested in discovery, has been unable to travel to Tucson for hearings and depositions, has been unable to underwrite the expenses of bringing in out-of-state witnesses to support his defense, which compelled petitioner to relocate to Nashville, Tennessee where he has resided since February 1995 with his 28 year old son in a small one-bedroom apartment.

* * * *

In sum, it is clear given the value our legal system places of the Full Faith and Credit Clause in promoting finality of proceedings in a national system of parallel state and federal courts, prudential considerations, judicial caution and restraint and the comity one sovereign sister state owes to another jurisdiction would ordain that a reviewing court has no jurisdiction even in default proceedings to invalidate a decree of a sovereign sister state without first undertaking a studious examination of the state court record, and applying the applicable law of the foreign court before accepting or declining to give that decree full faith and credit. Furthermore, a default judgment is subject to collateral attack under the due process clause where entered improperly as a punishment for contempt Hovey v. Elliott, 167 U.S. 409 (1897); or where there is no evidence presented to support the order and the procedural defects in the proceedings are so unfair as to constitute a violation of due process as to deprieve [sic] the proceedings of its vitality, Eagles v. United States, 329 U.S. 304, 314 (1946); or where the procedural irregularities are serious enough to be deemed "jurisdictional". Yale v. National Indemnity Co., 602 F.2d 642, 644 (4th Cir. 1979); Bass v. Hoagland, 172 F.2d 642, 644 (5th Cir. 1949) (judgment reached without due process of law is without jurisdiction and void and may be attacked collaterally by resistance to its enforcement if a civil judgment)); Fehlhaber v. Fehlhaber, 681 F.2d 1015 (5th Cir. 1982)) (judgment rendered in violation of due process is void and need not be enforced). Article IV § 1, 28 U.S.C. § 1738 and the 14th amendment command nothing less than the invalidate of the court orders below.

Appendix 12.

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

May 2, 1996

RE: ROBERT S. CATZ v. CHALKER; ET AL.
2 CA-SA 96-0051
Pima County Superior Court Cause No. D-103065

The following action was taken by the Court of Appeals for the State of Arizona, Division Two, Department B on May 2, 1996

ORDERED: The Court declines to accept jurisdiction.

FURTHER ORDERED: Real Party in Interest's request for fees and costs is GRANTED upon the filing of the verified statement of cost pursuant to Ariz. R. Civ. App. P. 21(c).

Presiding Judge Espinosa, Chief Judge Druke and Judge Hathaway participated in the determination of this matter.

JOYCE A. GOLDSMITH, Clerk

Appendix 13.

Portion of Petition for Review to the Arizona Supreme Court, Catz v. McDonald, et al, No. CV 96-0358 (Ariz. Sup. Ct. filed May 17, 1996)

III. ISSUES PRESENTED TO THE COURT OF APPEALS BUT NOT DECIDED

Petitioner presented to the court of appeals the following issues of constitutional law that were neither considered nor decided which petitioner presents to the Court for review:

A. Whether Arizona's statutory scheme, A.R.S. I 25-315D and 25-315F which authorizes in dissolution proceedings, the pre-judgment seizure of property without prompt notice and opportunity for some kind of "expeditious" post-seizure hearing and without requiring security to protect individuals against wrongful attachments affected by sequestration to be served with notice by legal process, are unconstitutional under Connecticut v. Doehr, 501 U.S. 1 (91), State v. B Bar Enterprises, 133 Ariz. 99, 649 P.2d 978 (1982) and Mullane v. Hanover Central Bank and Trust, 339 U.S. 306 (1950).

B. Whether a December 1, 1994 temporary restraining order without notice issued under color of A.R.S. §§ 25-315D and 25-315F which merged into a final judgment by default entered by the Superior Court of Pima County on March 13, 1995 some 114 days after the initial seizure, resulting in the permanent taking of property without any opportunity for some kind of immediate, prompt and expeditious post-seizure notice and hearing are void for want of due process for combined procedural and constitutional irregularities under Cravins, Dargen & Co. v. Superior Court, 153 Ariz. 474, 737 P.2d 1373 (1987) and

Phoenix Metals, Inc. v. Roth, 79 Ariz. 106, 284 P.2d 645 (1954).

Appendix 14.

October 25, 1996
RE: ROBERT S. CATZ vs. COMM. JOSEPH MCDONALD-PIMA CO SUP
CT/
SUSAN R. CHALKER et al
Supreme Court No. CV-96-0358-PR
Court of Appeals No. 2 CA-SA 96-0051
Pima County No. D-103065

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on October 25, 1996, in regard to the above-referenced cause:

ORDERED: Petitioner's Motion for Leave to File Supplement to Appendix in Support of Petition for Review = GRANTED.

FURTHER ORDERED: Petition for Review by the Supreme Court = DENIED.

FURTHER ORDERED: Request for Sanctions [Real Party in Interest Susan R. Chalker] = DENIED.

FURTHER ORDERED: Request for Attorneys' Fees [Real Party in Interest Susan R. Chalker] = GRANTED.

FURTHER ORDERED: Request for Attorneys' Fees [Real Party in Interest TIAA-CREF] = GRANTED.

A panel composed of Chief Justice Feldman, Vice Chief Justice Zlaket, and Justice Jones participated in the determination of this matter.

Record returned to Court of Appeals, Division Two, Tucson, this 25th day of October, 1996.

NOEL K. DESSAINT, Clerk

To:

Robert S. Catz
Annette M. Everlove, Esq., Butler & Stein PC
Leonard Karp, Esq. and Laura C. Belleau, Esq., Karp
Heurliln & Weiss PLC
Tom Slutes, Esq., Slutes Sakrison Grant Hill & Rubin PC
Michael J. Rusing, Esq., Rusing & Lopez PLLC
Joyce A. Goldsmith, Clerk, Court of Appeals, Division
Two
Lexis-Nexis
West Publishing Company

Appendix 15.

A.R.S. § 25-315

A. In all actions for the dissolution of marriage or for legal separation, the clerk of the court shall pursuant to order of the superior court issue a preliminary injunction in the following manner:

1. The preliminary injunction shall be directed to each party to the action and contain the following orders:

(a) That both parties are enjoined from transferring, encumbering, concealing, selling or otherwise disposing of any of the joint, common or community property of the parties except if related to the usual course of business, the necessities of life or court fees and reasonable attorney fees associated with an action filed under this article, without the written consent of the parties or the permission of the court.

(b) That both parties are enjoined from molesting, harassing, disturbing the peace of or committing an assault or battery on the person of the other party or any natural or adopted child of the parties.

(c) That both parties are enjoined from removing any natural or adopted child of the parties then residing in Arizona from the jurisdiction of the court without prior written consent of the parties or the permission of the court.

2. The preliminary injunction shall include the following statement:

"Warning"

This is an official court order. If you disobey the court may find you in contempt of court. You may also be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.

You or your spouse may file a certified copy of this order with your local law enforcement agency. A certified copy may be obtained from the clerk of the court that issued this order. If you are the person that brought this action, you must also file evidence with the law enforcement agency that this order was served on your spouse.

This court order is effective until a final decree of dissolution or legal separation is filed or the action is dismissed."

3. The preliminary injunction shall be effective against the petitioner upon filing the petition and against the respondent upon service of a copy of the order. In the event of service by registered mail under the rules of civil procedure, the order shall be effective upon receipt of the order. The order shall remain effective until further order of the court or the entry of a decree of dissolution or legal separation.

4. At the time of filing the petition for dissolution or legal separation, the copies of the preliminary injunction shall be issued to the petitioner or the agent, servant or employee filing the petition for dissolution or legal

separation. The petitioner shall be deemed to have accepted service of the petitioner's copy of the preliminary injunction and to have actual notice of the contents thereof by filing or causing to be filed a petition for dissolution or legal separation. The petitioner shall cause a copy of the preliminary injunction to be served upon the respondent together with a copy of the summons and petition for dissolution or legal separation.

5. The preliminary injunction shall have the force and effect of an order of the superior court signed by a judge and shall be enforceable by all remedies made available by law, including contempt of court. The provisions of rules 65(a)(1) and 65(e) of the rules of civil procedure shall not be applicable to the preliminary injunction.

B. In a proceeding for dissolution of marriage, for legal separation or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child, natural or adopted, common to the parties entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts

C. As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary restraining order or preliminary injunction for any of the following relief:

1. Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm may otherwise result.

2. Providing other injunctive relief proper in the circumstances.

D. The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed. No bond shall be required unless the court deems it appropriate.

E. On the basis of the showing made, and in conformity with sections 25-318 and 25-319, the court may issue a preliminary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstances. The court may also make temporary order respecting the

F. A temporary order or preliminary injunction:

1. Does not prejudice the rights of the parties or any child which are to be adjudicated at the subsequent hearings in the proceeding.

2. May be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under section 25-327 and as provided in rule 65 of the rules of civil procedure.

3. Terminates when the final decree is entered or when the petition for dissolution or legal separation is dismissed.

G. A person who disobeys or resists an injunction issued pursuant to subsection A, paragraph 1, subdivision (b) or subsection C, paragraph 1 of this section is subject to arrest and prosecution for interference with judicial proceedings pursuant to section 13-2810 and the following procedures apply:

1. Any party may cause a certified copy of the injunction and return of service on the other party to be registered with the sheriff having jurisdiction of the area in which the party resides. The party originally registering the injunction shall register any with such sheriff. For enforcement by arrest and prosecution for interference with judicial proceedings, a certified copy of the injunction, whether or not registered with such sheriff, is presumed to be a valid existing order of the court until a final decree of dissolution or legal separation is entered or the action for dissolution or legal separation is dismissed.

2. A peace officer may, with or without a warrant, arrest a person if he has probable cause to believe that an offense under this subsection has been committed and he has probable cause to believe that the person to be arrested has committed the offense, whether such offense is a felony or a misdemeanor and whether such offense is a felony or a misdemeanor and whether such offense was committed within or without the presence of the peace officer. The release procedures available under section 13-3883,

paragraph 4 and section 13-3903 are not applicable to arrests made pursuant to this subsection.

3. A peace officer making an arrest pursuant to this subsection is not civilly or criminally liable for the arrest if the officer acts upon probable cause and without malice.

4. A person arrested pursuant to this subsection may be released from custody in accordance with the rules of criminal procedure or other applicable statute. An order for release, with or without an appearance bond, shall include pretrial release conditions necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide additional conditions which the court deems appropriate, including participation in any counseling programs available to the defendant.

5. The remedies provided in this subsection for enforcement of the preliminary injunction are in addition to any other civil or criminal remedies available, including civil contempt of court. The use of one remedy does not prevent the simultaneous or subsequent use of any other.

Supreme Court, U.S.
FILED
MAR 27 1997
OFFICE OF THE CLERK

No. 96-1354

In The

Supreme Court of the United States

October Term, 1996

ROBERT S. CATZ,

Petitioner,

v.

TRIAL COMMISSIONER JOSEPH R. McDONALD, DOMESTIC RELATIONS DIVISION OF THE SUPERIOR COURT IN AND FOR THE COUNTY OF PIMA, ARIZONA, SUSAN R. CHALKER (Real Party of Interest), FIDELITY INVESTMENTS, TEACHERS INSURANCE ANNUITY ASSOCIATION-COLLEGE RETIREMENT EQUITY FUND, AND WATERHOUSE SECURITIES, INC.,

Respondents.

On Petition For Writ Of Certiorari To The Arizona Court Of Appeals, Division Two

BRIEF IN OPPOSITION

LEONARD KARP
Counsel of Record
Counsel for Respondent Susan R. Chalker
33 N. Stone Avenue
Suite 2120
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March 27, 1997

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Whether this Court has jurisdiction pursuant to 28 U.S.C. § 1257 to hear this matter where Petitioner neither raised, nor did the court below decide, the "question" Petitioner presents in his Petition for Writ of Certiorari.

2. Whether the Arizona statutes and the Arizona courts afforded due process to Petitioner.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Real Party in Interest, Susan R. Chalker ("Chalker") requests that this Court deny the Petition for Writ of Certiorari filed by Robert Catz ("Catz"), wherein he seeks review of the judgment of the Arizona Court of Appeals, Division Two, entered on May 2, 1996. The decision of the Arizona Court of Appeals, Division Two, does not decide an important federal question nor does it conflict with any decisions among other state or federal courts. Review by this Court is unnecessary and inappropriate.

OPINIONS BELOW

Chalker concurs with the Statement of Opinions Below as set forth in Catz' Petition.

JURISDICTION

On November 26, 1996, the Supreme Court of the State of Arizona denied review of Catz' Petition for Special Action filed with the Arizona Court of Appeals, Division Two ("Court of Appeals"). Catz asserts that this Court has jurisdiction to review the Court of Appeals decision pursuant to 28 U.S.C. § 1257. He is wrong. A final judgment regarding the "question" presented in Catz' Petition for Writ of Certiorari ("Petition") was never entered by the Court of Appeals or the Arizona Supreme Court and this Court is therefore deprived of review jurisdiction under 28 U.S.C. § 1257. Jurisdiction under 28 U.S.C. § 1257 is also unavailing because Catz never raised the issue of the

constitutional validity of the Arizona statute imposing an automatic injunction against the parties to a domestic relations proceeding, A.R.S. § 25-315, in his Petition for Special Action to the Court of Appeals.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Arizona Revised Statutes, § 25-315 is the sole statutory provision involved in the matter before this Court. It states in full:

> **Temporary order or preliminary injunction; effect**
>
> **A.** In all actions for the dissolution of marriage or for legal separation, the clerk of the court shall pursuant to order of the superior court issue a preliminary injunction in the following manner:
>
> 1. The preliminary injunction shall be directed to each party to the action and contain the following orders:
>
> (a) That both parties are enjoined from transferring, encumbering, concealing, selling or otherwise disposing of any of the joint, common or community property of the parties except if related to the usual course of business, the necessities of life or court fees and reasonable attorney fees associated with an action filed under this article, without the written consent of the parties or the permission of the court.
>
> (b) That both parties are enjoined from molesting, harassing, disturbing the peace

of or committing an assault or battery on the person of the other party or any natural or adopted child of the parties.

(c) That both parties are enjoined from removing any natural or adopted child of the parties then residing in Arizona from the jurisdiction of the court without the prior written consent of the parties or the permission of the court.

2. The preliminary injunction shall include the following statements:

"Warning

This is an official court order. If you disobey this order the court may find you in contempt of court. You may also be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.

You or your spouse may file a certified copy of this order with your local law enforcement agency. A certified copy may be obtained from the clerk of the court that issued this order. If you are the person that brought this action, you must also file evidence with the law enforcement agency that this order was served on your spouse.

This court order is effective until a final decree of dissolution or legal separation is filed or the action is dismissed."

3. The preliminary injunction shall be effective against the petitioner upon filing the petition and against the respondent upon service of a copy of the order. In the event of service by registered mail under

the rules of civil procedure, the order shall be effective upon receipt of the order. The order shall remain effective until further order of the court or the entry of a decree of dissolution or legal separation.

4. At the time of filing the petition for dissolution or legal separation, the copies of the preliminary injunction shall be issued to the petitioner or the agent, servant or employee filing the petition for dissolution or legal separation. The petitioner shall be deemed to have accepted service of the petitioner's copy of the preliminary injunction and to have actual notice of the contents thereof by filing or causing to be filed a petition for dissolution or legal separation. The petitioner shall cause a copy of the preliminary injunction to be served upon the respondent together with a copy of the summons and petition for dissolution or legal separation.

5. The preliminary injunction shall have the force and effect of an order of the superior court signed by a judge and shall be enforceable by all remedies made available by law, including contempt of court. The provisions of rules 65(a)(1) and 65(e) of the rules of civil procedure shall not be applicable to the preliminary injunction.

B. In a proceeding for dissolution of marriage, for legal separation or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child,

natural or adopted, common to the parties entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

C. As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary restraining order or preliminary injunction for any of the following relief:

1. Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm may otherwise result.

2. Providing other injunctive relief proper in the circumstances.

D. The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed. No bond shall be required unless the court deems it appropriate.

E. On the basis of the showing made, and in conformity with §§ 25-318 and 25-319, the court may issue a preliminary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstances. The court may also make temporary orders respecting the property of the parties, as may be necessary.

F. A temporary order or preliminary injunction:

1. Does not prejudice the rights of the parties or any child which are to be adjudicated at the subsequent hearings in the proceedings.

2. May be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under § 25-327 and as provided in rule 65 of the rules of civil procedure.

3. Terminates when the final decree is entered or when the petition for dissolution or legal separation is dismissed.

G. A person who disobeys or resists an injunction issued pursuant to subsection A, paragraph 1, subdivision (b) or subsection C, paragraph 1 of this section is subject to arrest and prosecution for interference with judicial proceedings pursuant to § 13-2810 and the following procedures apply:

1. Any party may cause a certified copy of the injunction and return of service on the other party to be registered with the sheriff having jurisdiction of the area in which the party resides. The party original registering the injunction shall register any changes or modifications of the injunction with such sheriff. For enforcement by arrest and prosecution for interference with judicial proceedings, a certified copy of the injunction, whether or not registered with such sheriff, is presumed to be a valid existing order of the court until a final decree of dissolution or legal separation is entered or the action

for dissolution or legal separation is dismissed.

2. A peace officer may, with or without a warrant, arrest a person if he has probable cause to believe that an offense under this subsection has been committed and he has probable cause to believe that the person to be arrested has committed the offense, whether such offense is a felony or a misdemeanor and whether such offense was committed within or without the presence of the peace officer. The release procedures available under § 13-3883, paragraph 4 and § 13-3903 are not applicable to arrests made pursuant to this subsection.

3. A peace officer making an arrest pursuant to this subsection is not civilly or criminally liable for the arrest if the officer acts upon probable cause and without malice.

4. A person arrested pursuant to this subsection may be released from custody in accordance with the rules of criminal procedure or other applicable statute. An order for release, with or without an appearance bond, shall include pretrial release conditions necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide additional conditions which the court deems appropriate, including participation in any counseling programs available to the defendant.

5. The remedies provided in this subsection for enforcement of the preliminary injunction are in addition to any other civil

or criminal remedies available, including civil contempt of court. The use of one remedy does not prevent the simultaneous or subsequent use of any other.

STATEMENT OF THE CASE

Catz' factual recitation of the case is inaccurate, incomplete and misleading and Chalker therefore includes a Statement of the Case.

A. INTRODUCTION

The instant Petition is but another in a long series of attempts by Catz to collaterally attack the Decree of Dissolution of Marriage ("Divorce Decree") entered March 14, 1995, by the Superior Court of Arizona in and for the County of Pima ("Superior Court"). Although the "issues" raised in the Petition are the same as those repeatedly raised by Catz in various proceedings in various fora, they were *never* presented to the Court of Appeals nor properly raised before the Supreme Court of the State of Arizona for resolution. With the exception of his recently filed and pending request for review in the United States Court of Appeals for the Sixth Circuit and an action in, although currently stayed by, the United States District Court for the Middle District of Tennessee, all other related actions filed by Catz have either been dismissed or voluntarily withdrawn. The following statement details the odyssey of judicial abuse of process to which Catz has subjected Chalker and the courts from November, 1994 to date.

B. ARIZONA: THE TRIAL COURT

On November 4, 1994, Chalker filed a Petition for Dissolution of Marriage against Catz in the Superior Court, Cause No. D-103065. At the same time, she also filed a Petition for Order to Show Cause requesting *pendente lite* orders on spousal maintenance, exclusive use of the marital residence, attorney's fees, child support and funds to service the parties' community debt. Hearing on the Petition for Order to Show Cause was set for January 11, 1995. On December 1, 1994, the Superior Court granted Chalker's *Ex Parte* Motion to Add Parties and for Issuance of Temporary Restraining Orders ("TRO") as permitted under A.R.S. § 25-315. Fidelity Investment Trust, TIAA-CREF, and others, were named as additional parties to the action on Dissolution of Marriage. Chalker's request for TRO was prompted by Catz' avowal that he intended to remove all property from the reach of the Arizona court and had taken steps to see that Chalker would be unable to touch any community assets.[1] Catz misrepresents the facts when he states in his Petition that the Superior Court was not advised of the existence of an earlier entered Ohio divorce decree. In an affidavit appended to the application for TRO, Chalker stated, under oath, she never had actual notice of any prior divorce proceedings, nor had she been served with

---

[1] Chalker's fears that Catz would secret away community assets proved correct. On November 26, 1994, Catz acted on his threat and requested Fidelity, a financial institution holding community assets, to transfer title of community funds to his adult children from a prior marriage, Shawn and Jason Catz.

divorce papers from any jurisdiction purporting to contain a judgment on divorce between herself and Catz.[2] Catz' repeated claims to the contrary aside, the Superior Court was well aware from the outset of the action on Dissolution of Marriage of the Ohio "divorce".

Although Catz knew that Chalker had filed a Petition for Dissolution (he had received notice from the Superior Court on November 22, 1994 informing him of his option to attend mediation to resolve child custody issues), he evaded service of process until December 14, 1994. On that same date, Catz filed an Emergency Motion to Dismiss the action on dissolution. The court did not, as Catz contends, "evaluate" Catz' emergency motion and determine that Chalker failed to disclose the existence of the Ohio decree. Rather, it set a hearing on the Motion to Dismiss for December 19, 1994. This hearing was later reset to January 11, 1995, the same date and time as the

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[2] Catz and Chalker were married on April 13, 1980. On or about April 10, 1989, while Catz was teaching law in Ohio and Chalker was residing with their minor son at their marital residence in Florida, Catz obtained a divorce from the Court of Common Pleas of Cuyahoga County, Ohio, by entry of a default judgment. Catz claimed to have obtained service upon Chalker by sending the summons and complaint to a post office box, registered in Catz' name, where they were purportedly accepted by an individual named Tim Loughart; Catz did not serve Chalker personally at the marital residence. Chalker testified that she was never served with process, never received notice of the action, and was not aware of the purported divorce until late in 1994. (APPENDIX 1)

Chalker recognizes that the Appendices to her Brief in Opposition are unusually lengthy but believes the submission of same is necessary for the Court appreciation of the multiplicitious litigation to which she has been subjected.

pending hearing on *pendente lite* orders. Instead of actively defending against the Superior Court action, Catz filed a Notice of Removal to the United States District Court for the District of Arizona ("Arizona district court"), thereby staying all state court matters, including the very post-seizure hearing Catz now complains the Superior Court failed to provide. (APPENDIX 2)

Following the Arizona district court's remand on January 12, 1995, Catz did nothing to preserve or to obtain a hearing to determine the efficacy of the TRO. Rather, it was Chalker who filed an amended notice of hearing for *pendente lite* relief. The Superior Court reset that hearing to February 16, 1995, later rescheduled to March 14, 1995.[3] Catz was provided with all pleadings, discovery requests, court orders, and notices of hearing.[4] In fact, at

---

[3] Chalker's Motion to Continue the Show Cause hearing for *pendente lite* orders was filed on January 25, 1995 and mailed to Catz. (APPENDIX 3) Catz promptly responded to this Motion on February 3, 1995 requesting that the hearing be continued for the reason that he had competing commitments. (APPENDIX 4) At the February 6, 1995 hearing, for which Catz did not appear, the Superior Court continued the Show Cause hearing to March 14, 1995. Catz' request for continuance is significant in that it shows he was in receipt of Chalker's pleadings and because he did not ask for a hearing regarding his earlier filed Motion to Dismiss.

[4] At the heart of Catz' grievance is his charge that hearing notices came to him at a delayed pace, if at all. This allegation is disingenuous. Catz chose to respond to some of Chalker's pleadings in a timely fashion, while completely ignoring others. Catz changed places of residence on several occasions during the time period in question, and did not notify the Superior Court of his permanent relocation to Nashville, Tennessee, until late January 1995.

one point, Chalker was serving Catz at five different addresses and communicating with Catz through a Mr. Philip Stinson, an attorney who represented Catz in the Arizona district court matter. When Catz failed to appear at his deposition as scheduled, Chalker filed a Motion for Sanctions which was set for hearing. Although Catz alleges not to have received timely notice of the hearing on sanctions, Chalker informed Catz of the hearing both by sending him the notice of hearing, and confirming the hearing date and time, *via* telephone and letter, with Mr. Stinson. (APPENDIX 5) Following the March 2, 1995, evidentiary hearing on sanctions, for which Catz did not appear, the Superior Court found Catz had willfully, deliberately and in bad faith refused to participate in discovery and ordered that the scheduled March 14, 1995 hearing be limited to a proceeding on default. (APPENDIX 6)

Although he now states he had untimely and inadequate notice, Catz has conceded his knowledge of the March 14, 1995 hearing. Indeed, in an attempt to forestall the very hearing of which he claims to have ill notice Catz filed, on the very day of the hearing, yet another Notice of Removal to the Arizona district court. (APPENDIX 7) Prior to the second removal and following an evidentiary hearing, the Superior Court entered default judgment against Catz. The Superior Court refused to give full faith and credit to the 1989 Ohio Decree of Dissolution, finding it to be null and void as having been fraudulently obtained. (APPENDIX 8)

On March 31, 1995, the Arizona district court again remanded the case to the Superior Court and specifically ordered the federal clerk to accept no further pleadings

from Catz without the court's permission. (APPENDIX 9) While Catz' second attempt at removal was pending in the Arizona district court, he filed motions pursuant to Rules 59 and 60, ARIZ.R.CIV.P., in the Superior Court to vacate the orders on sanctions and the default judgment entered against him. Catz claims that his post-judgment Superior Court pleadings were returned to him on April 14, 1995 by the clerk of the Superior Court with a questionnaire required of litigants unable to pay fees and costs. However, after the second remand from the Arizona district court, Catz did not attempt to re-file his Superior Court post-judgment motions, nor did he return the clerk's questionnaire. Catz, a practicing lawyer and former professor of law, having failed to substantively respond to the proceedings pending in the Superior Court and without having made even the most cursory attempt to comply with the procedural requirements of Arizona law, now complains that he lost his right to appeal the judgment of the Superior Court because of the actions of the clerk of the court.[5]

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[5] Rule 60, Ariz.R.Civ.P., provides a litigant with indefinite time for filing a motion for relief from judgment if the judgment is void and six months if the judgment was obtained by fraud. Therefore, as a matter of law, Catz was not deprived of any rights as a result of the clerk's return of his papers. Rather, it is apparent that Catz simply elected to challenge the Superior Court's ruling in other fora, *via* collateral attacks, rather than through the well-articulated procedures that were available to him in the Arizona courts.

C. THE PETITION IS YET ANOTHER ATTEMPT TO COLLATERALLY ATTACK THE DIVORCE DECREE

Catz asserts that "having been deprived of his right to file a direct appeal from the default judgment," he filed an "original" action in the United States District Court for the Middle District of Tennessee ("Tennessee district court") collaterally attacking the Arizona Divorce Decree on October 2, 1995.[6] Curiously, Catz omits mention of the litigious wars he fought on other fronts from April 1995 through the October Tennessee filing. A summary of Catz' filings from April 10 through October 1995, which escape mention in his Petition follow:

1. On April 10, 1995, Catz moved to dismiss his earlier filed federal civil rights action against Chalker. Catz filed this § 1983 complaint against Chalker on December 20, 1994. The Arizona District Court dismissed this complaint with prejudice on June 8, 1995 expressly adopting Chalker's reasoning that Catz' "utter disregard for the law must be halted . . . " (APPENDIX 11) Catz had

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[6] Coincidentally, this occurred after a hearing in the United States District Court for the Northern District of Ohio ("Ohio district court") on September 29, 1995 on Catz' Motion for Temporary Restraining Order filed in conjunction with his Complaint for Declaratory and Injunctive Relief. At that hearing, the Honorable John M. Manos noted, on the record, numerous deficiencies in Catz' pleadings, including lack of personal jurisdiction, improper venue, the absence of allegations of state action to support a civil rights action under 42 U.S.C. § 1983, and the preclusive effect of the prior actions in which the same claims had been asserted and dismissed. The transcript of that hearing demonstrates the court's clear intent to dismiss Catz' complaint. (APPENDIX 10).

also filed a companion civil rights action against Chalker's divorce attorneys, but never served the complaint.

2. On April 12, 1995, Catz filed an Application for Supplemental Relief and an Ex-Parte Lis Pendens in the Court of Common Pleas of Cuyahoga County, Ohio ("Ohio State Court"), requesting declaratory and injunctive relief. (APPENDIX 12) Catz voluntarily dismissed this action on July 28, 1995, the day of the hearing on the temporary orders, stating to the court that his intentions were to litigate his claims to fruition in Arizona.

3. On April 28, 1995, Catz filed a Notice of Appeal to the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") from the Order of the Arizona District Court, remanding the dissolution proceedings to the Superior Court. He voluntarily dismissed this appeal on June 10, 1995.

4. On June 23, 1995, and although the time limits for filing a Motion to Vacate Judgment pursuant to Rule 60(c), ARIZ.R.CIV.P., had yet to expire, Catz filed a Petition for Special Action in the Supreme Court of Arizona requesting review of the Superior Court's orders. (APPENDIX 13) The court declined to hear the petition by order entered on June 30, 1995. (APPENDIX 14)

5. On July 4, 1995, in the Supreme Court of Arizona, Catz filed an Emergency Motion for Rehearing by the Full Court En Banc regarding the denial of entertaining the Petition for Special Action. (APPENDIX 15) This motion was denied by the court on July 14, 1995. (APPENDIX 16) Instead of pursuing

relief through the Court of Appeals, as the Arizona Supreme Court suggested in their June 30, 1995 order, Catz voluntarily withdrew his Petition for Special Action on August 10 and advised the clerk that he intended to petition for a Writ of Certiorari with the United States Supreme Court. (APPENDIX 17)

6. On July 27, 1995, and while the Ohio state court action was still pending, Catz filed a complaint for Declaratory and Injunction relief in the Ohio district court requesting substantially the same relief as he requested in both the Ohio state court action and in his Arizona Special Action Petition. (APPENDIX 18)

7. On September 26, 1995, Catz filed his First Amended Complaint in the Ohio district court adding Chalker's divorce counsel, Leonard Karp and Annette Everlove, as additional defendants. (APPENDIX 19) This complaint was dismissed, with prejudice, by the Honorable Judge M. Manos, on December 1, 1995. The court found "the complaint does not have an arguable basis in law or fact because it is barred by the principle of *res judicata*. Catz entered an appearance in the Arizona state case and filed the second Arizona federal case. Judgments were rendered on the merits in both cases. His opportunities to attack them ended when he did not appeal." (citations omitted). The court further found "[Catz'] claims in [this case] are identical to ones previously raised and decided . . . [t]he complaint filed by Catz is without merit." (APPENDIX 20).

Following entry of the Divorce Decree by the Superior Court, Catz embarked upon a campaign of forum shopping marked by dishonesty and vituperation, raising substantially the same claims in the Arizona district court, the Ninth Circuit, the Ohio state court and the Ohio district court, as well as the Tennessee district court. Never, however, did Catz put his claims for relief before the court to which he was admonished time and time again to seek redress, the Arizona Court of Appeals.

Contrary to Catz' assertion, his Tennessee action was far from "original," rather it was substantially identical to the complaints previously filed in the Ohio state court and the district courts of Ohio and Arizona. (APPENDIX 21) Chalker moved to dismiss Catz' complaint in the Tennessee district court for lack of personal and subject matter jurisdiction, responsive to which Catz filed his First Amended Complaint. On October 26, 31 and November 2, 1995, the Tennessee district court, the Honorable Robert Echols, held a hearing on Chalker's Motion to Dismiss. A flurry of post-hearing filings by Catz followed, including his motion to, once again, amend his complaint. On February 7, 1996, Judge Echols entered a Memorandum Opinion and Order dismissing Catz' complaint, finding that Catz' claims were nothing more than collateral attacks on the judgment of the Superior Court in a domestic relations action and that federal subject matter jurisdiction was therefore lacking. (APPENDIX 22) Catz thereupon filed a motion to alter or amend the judgment and another motion for leave to amend the complaint. (APPENDIX 23) All were denied by court

order on April 10, 1996.[7] The Tennessee district court, like the Ohio and Arizona district courts before it, advised Catz that his only avenue for relief, if such were due, was through the appellate process in Arizona.

On November 30, 1995, while the first Tennessee district court case was pending, Catz filed a second action in the Tennessee district court. In February, 1996, Catz filed an Amended Complaint in this second action, a document almost identical to the proposed amended complaint he was denied leave to file in the first action, even containing the same typographical errors. (APPENDIX 24) However, it was not until February 26, 1996, after Judge Echols had issued his ruling dismissing the first Tennessee district court action, that Catz attempted to serve any defendant in the second action. At the May 14, 1996 status conference regarding the second action, Catz acknowledged that he intended to file yet another action against the same named defendants in the United States District Court for the District of Columbia. This prompted the Magistrate Judge presiding at the status conference to enter an order enjoining Catz from filing any actions against the defendants in any other district court and staying further proceedings in the second Tennessee district court action pending the determination of the consolidated cases on appeal to the Sixth Circuit. (APPENDIX 25) See footnote[7], *supra*.

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[7] Catz appealed the Tennessee district court's order, which was consolidated with his appeal of the Ohio district court's order, Case Nos. 96-3114 and 96-5776, currently pending in the Sixth Circuit Court of Appeals.

D. BACK TO ARIZONA

On March 27, 1996, more than a year after entry of the Divorce Decree Catz filed his Verified Petition for Special Action in the Arizona Court of Appeals, Division Two. (APPENDIX 26) By Order entered May 2, 1996, the Court of Appeals declined jurisdiction and awarded Chalker her attorneys' fees and costs. (APPENDICES 27 and 28) On May 18, 1996 Catz filed his Petition for Review with the Arizona Supreme Court. (APPENDIX 29) There, Catz asked the court to consider for the first time the constitutionality of the injunctive provisions of A.R.S. § 25-315. Although Catz insisted in pleadings to the Arizona Supreme Court that this issue was presented to the Court of Appeals, it in fact was neither raised by Catz nor decided by that court. Likewise, Catz now persists in his assertion to the Court that the question of the constitutionality of A.R.S. § 25-315 was properly before the Court of Appeals. However, as the record below clearly demonstrates, Catz never asked the Court of Appeals to review and/or rule upon the constitutionality, or lack thereof, of A.R.S. § 25-315. On October 25, 1996, the Supreme Court of Arizona denied Catz' Petition for Review, and as with the Court of Appeals below, awarded Chalker her attorneys' fees and costs. (APPENDICES 30 and 31)

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

A. THE ARIZONA STATE COURT DID NOT DECIDE AN IMPORTANT FEDERAL QUESTION OR IMPORTANT QUESTION OF FEDERAL LAW.

The principal purpose behind certiorari jurisdiction is to permit this Court to resolve conflicts among the United States courts of appeal *inter se* and/or the state courts of last resort concerning the United States Constitution or provisions of federal law. Rule 10, Sup.Ct.R; *Braxton v. U.S.*, 500 U.S. 344 (1991). At a minimum, the petitioner must present a question of federal dimension and must have presented that same question to the courts below. When an important federal question is not properly raised below, this Court may not proceed on a petition for certiorari. *Ellis v. Dixon*, 349 U.S. 458, rehearing denied, 350 U.S. 855 (1955). Here, neither the Arizona Supreme Court nor the Court of Appeals decided an issue of federal law. The question Catz now presents for review was neither presented to, nor resolved by, the Arizona courts. In fact, in his Petition for Special Action to the Court of Appeals, Catz never mentions A.R.S. § 25-315, nor does he cite any of the cases to which he refers this Court in support of his claim that the Arizona statute is unconstitutional.

Even assuming *arguendo* that Catz properly presented a federal question to the Court of Appeals, this Court should nevertheless deny certiorari for the reason that no conflict regarding the constitutionality of A.R.S. § 25-315 exists between any federal and/or state courts. Indeed, demonstrative of the uniformity among jurisdictions as to

the validity of A.R.S. § 25-315 is the fact that it is based upon § 304 of the Uniform Marriage and Divorce Act.[8]

B. A.R.S. § 25-315 IS CONSTITUTIONAL ON ITS FACE AND AS APPLIED HERE

On November 4, 1994, concurrent with the filing of the Petition for Dissolution of Marriage, the clerk of the Superior Court issued a preliminary injunction enjoining both Catz and Chalker from removing their minor child from the state, from disturbing the peace of each other, and from disposing of marital assets without written permission of the parties or the court. The clerk's action was taken pursuant to A.R.S. § 25-315(A).[9] By order entered on December 1, 1994, the Superior Court froze certain marital assets of Catz and Chalker in accordance with A.R.S. § 25-315(D). This order was issued after the Superior Court reviewed affidavits of Chalker and Sandra Potter, a mutual friend of both parties, and found that

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[8] Arizona adopted the Uniform law with a slight variation which provides even more constitutional guarantees to divorcing spouses. Specifically Arizona's preliminary injunction states that a spouse may not dispose of joint or community property while the Uniform law states that a spouse may not dispose of "any" property pending dissolution proceedings. U.L.A. § 304(b)(1).

[9] The preliminary injunction expressly exempts the disposal of property in the usual course of business or for the necessities of life. A.R.S. § 25-315(A). Therefore Catz' complaint that he would have to suspend his business operations and would be unable to pay for the necessities of life is in error. (See, Catz' Petition at page 6).

absent such order irreparable injury to the marital community would result. Additionally, the Superior Court specifically found the posting of a bond inappropriate given the facts and circumstances of the case.

The purpose of A.R.S. § 25-315 is clear: to prevent, during the pendency of proceedings on dissolution of marriage, exactly the type of misconduct Catz attempted to engage in here, i.e., the wrongful dissipation of marital assets, the secreting of marital assets, and the placing of marital assets beyond the jurisdiction of the court. The constitutionality of the injunctive provisions of A.R.S. § 25-315 was challenged and affirmed by the United States Court of Appeals for the Ninth Circuit in *Stone v. Godbehere*, 894 F.2d 1131 (9th Cir. 1990). While recognizing that due process requires some form of notice and hearing when deprivation of property is at issue, the Ninth Circuit found that A.R.S. § 25-315 conformed to the due process requirements of the United States Constitution given the special circumstances involved in a dissolution proceeding (which include the individual's reduced interest in community property, the state's interest in preventing the dissipation of marital assets, and the unlikely risk of erroneous deprivation, *Stone id.* at 1134).

Similarly, the issuance of a TRO pursuant to A.R.S. § 25-213 is constitutionally sound, offering even more protection than the preliminary injunction provisions of A.R.S. § 25-315. Under A.R.S. § 25-213, the court must find an extraordinary need for prompt judicial action and the moving party has the burden of showing that irreparable injury will result without the order. Catz' allegation that he was deprived of due process because he was not given the opportunity to be heard on the TRO is absurd.

A.R.S. § 25-315(F)(2) provides for a post-seizure hearing. Specifically, A.R.S. § 25-315(F)(2) states that the TRO or the preliminary injunction may be revoked or modified "on a showing by affidavit of the facts necessary to revocation or modification of [the order]". The statute clearly provides for a prompt hearing on orders issued pursuant to A.R.S. § 25-315(D). It was not any statutory failing or frailty that caused the hearing on Catz' Motion to Dismiss to be stayed but rather it was Catz' own conduct including, most significantly, the filing of the Notice of Removal to the Arizona District Court. After remand to the Superior Court, Catz never renewed his request for hearing. It is axiomatic that one who conscientiously disregards his rights and opportunities to be heard, as Catz did here, cannot later be permitted to claim a violation of due process.

C. THE UNIQUE FACTS OF THIS CASE ARE NOT SUITED TO THE PRONOUNCEMENT OF BROAD LEGAL PRINCIPLES

Although Catz casts this case as an example of the Arizona courts depriving an innocent litigant of due process, it is not. Rather, this case involves a lawyer and former professor of law, who fraudulently obtained a divorce in 1989, never disclosed the same to his wife and thereafter continued to live with her as husband and wife, including a relocation from Florida to Arizona, until September 1994. After his wife filed for dissolution of marriage in Arizona, Catz strategically chose to litigate his claims in the federal arena, thereby voluntarily abandoning his opportunities to avail himself of his rights

under the Arizona state appellate process.[10] After entry of judgment, Catz consistently refused to follow established, cogent Arizona post-judgment procedures. Instead, Catz commenced a protracted, abusive course of litigation in other jurisdictions in an effort to collaterally attack the Arizona judgment. These unique facts make this case particularly inappropriate for review and inappropriate for the explication of national policy by this Court.

D. THE IMPOSITION OF SANCTIONS AGAINST PETITIONER IS APPROPRIATE

As is plain from a brief review of the procedural history in this case, Catz has made a mockery of the judicial system. He has used both federal and state court processes to abuse and to harass his ex-wife and her counsel, rather than attempting to secure the just determination of any valid legal dispute. The "question" presented to this Court was never raised before the Arizona Court of Appeals. It has, however, been the subject of endless litigation pursued by Catz in court after court, in jurisdiction after jurisdiction, where his claims have either been summarily dismissed by the court or voluntarily withdrawn at the eleventh hour.

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[10] Response to Catz' allegations of no notice, calloused treatment, collusion and other draconian measures is detailed in Chalker's Statement of the Case. However, to briefly repeat, Chalker adamantly denies Catz' allegations and alleges that Catz is the victim of his own scheme to evade the Arizona state court process.

Chalker has been required to respond to these myriad spurious actions, causing to deplete her funds and hire counsel in three different states. "Somewhere along the line, the rights of the defendant to be free from costly and harassing litigation must be considered. So too must the time and energies of our courts and the rights of would-be litigants awaiting their turns to have other matters resolved." *Poppenheim v. Portland Boxing and Wrestling Commission*, 442 F.2d 1047, 1054 (9th Cir. 1971).

Catz' opportunity to attack the judgment of the Superior Court ended when he did not appeal. Chalker therefore requests that this Court exercise its inherent powers to put an end to Catz' pattern of abusive and vexatious litigation and enjoin him from filing or prosecuting other litigation challenging the Divorce Decree entered by the Superior Court.

Rule 42, S.Ct.R., provides that when a Petition for Writ of Certiorari is frivolous, the Court may impose just damages and single or double costs against the Petitioner. Here, Catz' Petition is frivolous and constitutes a misuse of process for which he should be sanctioned. Chalker submits that the need for and propriety of sanctions is redoubled where, as here, Catz is a former law professor and member of the bars of the states of Ohio, Florida and the District of Columbia. Chalker therefore further requests that this Court impose just damages and double costs against Catz.

CONCLUSION

As stated herein, Catz raises no issue appropriate for the exercise of this Court's jurisdiction, and accordingly, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

LEONARD KARP
Counsel of Record for
Respondent Susan R. Chalker
33 N. Stone Avenue
Suite 2120
Tucson, Arizona 85701-1415
(520) 882-9705

March 27, 1997

APPENDICES

1. Affidavit of Susan Ruth Chalker filed with Petition for Temporary Restraining Orders in the Pima County Superior Court dissolution action on December 1, 1994..... App. 1

2. Petition and Notice of Removal in the United States District Court for the District of Arizona; Certificate of Service of Petition and Notice of Removal..... App. 4

3. Notice of Hearing on Motion and Order to Continue Hearing on Order to Show Cause filed in Pima County Superior Court on January 25, 1995..... App. 6

4. Respondent's Response to Petitioner's Motion to Continue Hearing on Order to Show Cause filed in Pima County Superior Court on January 31, 1995 with attached Certificate of Service...App. 8

5. Letter dated February 15, 1995 (Dictated February 14, 1995) to Philip Matthew Stinson, Sr., Esq., from Annette Everlove with enclosed Notice of Hearing on Petitioner's Motion for Sanctions/Motion to Strike Pleading filed in Pima County Superior Court on February 10, 1995..... App. 12

6. Pima County Superior Court Minute Entry Order regarding Under Advisement Ruling regarding Petitioner's Motion for Sanctions dated March 2, 1995..... App. 15

7. Second Petition and Notice of Removal filed in the United States District Court for the District of Arizona on March 13, 1995 with attached Certificate of Service..... App. 21

8. Certified copy of Decree of Dissolution of Marriage filed in the Pima County Superior Court on March 14, 1995..... App. 25

9. Order filed in the United States District Court for the District of Arizona on March 31, 1995..... App. 32

10. Transcript of Proceedings Before the Honorable John M. Manos, United States District Judge, for the United States District Court, Northern District of Ohio, Eastern Division dated September 29, 1995.....App. 36

11. Order filed in the United States District Court for the District of Arizona on June 9, 1995; Defendant's Response to Plaintiff's Motion for Voluntary Dismissal filed in the United States District Court for the District of Arizona on May 26, 1995.....App. 51

12. Plaintiff's Application for Supplemental Relief Pursuant to Ohio Rev. Code § 2721.09 to Enforce Against Defendant a Judgment of this Court Entered on April 10, 1989 filed in the Court of Common Pleas, Division of Domestic Relations, Cuyahoga County, Ohio.....App. 57

13. Verified Petition for Special Action filed in the Supreme Court of Arizona (cover page and page 3 only)..... App. 61

14. Order filed in the Supreme Court of Arizona on June 30, 1995..... App. 63

15. Emergency Motion for Rehearing by the Full Court en Banc filed on July 4, 1995 with attached Certificate of Service; Order filed in the Supreme Court of Arizona on June 30, 1995.....App. 65

16. Order filed in the Supreme Court of Arizona on July 14, 1995.....App. 72

17. Letter dated July 13, 1995 to Ms. Joyce A. Goldsmith, Clerk, from Robert S. Catz, Esquire ..... App. 74

18. Complaint for Injunctive and Declaratory Relief filed in the United States District Court for the Northern District of Ohio, Eastern Division on July 27, 1995.....App. 76

19. Plaintiff's First Amended Complaint filed in the United States District Court for the Northern District of Ohio, Eastern Division on September 26, 1995 – unsigned..... App. 81

20. Memorandum of Opinion filed in the United States District Court for the Northern District of Ohio, Eastern Division on December 1, 1995; Order filed in the United States District Court for the Northern District of Ohio, Eastern Division on December 1, 1995.....App. 91

21. Complaint for Declaratory and Injunctive Relief filed in the United States District Court for the Middle District of Tennessee, Nashville Division on October 2, 1995.....App. 102

22. Memorandum filed in the United States District Court for the Middle District of Tennessee, Nashville Division on February 7, 1996; Order filed in the United States District Court for the Middle District of Tennessee, Nashville Division on February 7, 1996.....App. 107

23. Plaintiffs' Motion for Leave to File the Attached Amended Complaint Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure filed in the United States District Court for the Middle District of Tennessee, Nashville Division on February 17, 1995; Plaintiffs' Amended Complaint filed in the United States District Court for the Middle District of Tennessee, Nashville Division on February 17, 1995..... App. 130

24. Plaintiffs' First Amended Complaint filed in the United States District Court for the Middle District of Tennessee, Nashville Division on February 26, 1996..... App. 140

25. Order filed in the United States District Court for the Middle District of Tennessee, Nashville Division on May 14, 1996..... App. 147

26. Verified Petition for Special Action filed in the Arizona Court of Appeals (cover page and page 2 only)..... App. 150

27. Order filed in the Court of Appeals, State of Arizona, Division Two on May 2, 1996... App. 153

28. Order filed in the Court of Appeals, State of Arizona, Division Two on June 10, 1996.. App. 154

29. Petition for Review by the Supreme Court (cover page and page 2 only) filed on May 18, 1996..... App. 155

30. Order from Supreme Court of Arizona dated October 25, 1996..... App. 158

31. Order from Supreme Court of Arizona dated December 10, 1996..... App. 160

APPENDIX 1
AFFIDAVIT

State of Arizona)
)
County of Pima)

I, SUSAN RUTH CHALKER, being first duly sworn, upon my oath, depose and say:

1. I am the Wife of Respondent, ROBERT S. CATZ, and I reside in Pima County, at 6374 North Vuelta Tajo, Tucson, Arizona 85718.

2. My Husband and I were married in April 1980 in Washington D.C.

3. Since the time of our marriage to date, my husband has always controlled our financial affairs.

4. In all the time we were married I only visited Ohio briefly on one or two occasions.

5. I have never seen any documents whatsoever concerning an alleged Ohio "divorce" until my Arizona attorneys obtained them from the court of Common Pleas in Cuyahoga County, Ohio in November 1994.

6. The Ohio court files state that the divorce petition was sent to a postal drop located on Bird Avenue in Miami, Florida and that someone named "Tim Luckhart" signed for the return receipt of said papers as my agent. I never rented, leased, owned, in any way contracted for, or had a key to a postal box at the Bird Avenue Postal Plus. I never authorized Tim Luckhart to be my agent at

the Bird Avenue address. Tim Luihard is a friend and business partner of my husband's and also owned Postal Plus at the time of the receipt.

7. Only when my husband was out of town would I pick up the mail from the Bird Avenue box and only during business hours, because the owners knew me as Robert Catz' wife.

8. My husband was constantly hiding from creditors maintaining several postal drop boxes.

9. My husband and I moved to Florida in 1983. At all times material to this case, we had a common understanding that Florida was our marital residence.

10. The Ohio Court file indicates that the divorce was granted on the grounds that my husband and I lived separate and apart without cohabitation from November, 1987 through November 1988. This is not true. He kept his clothes at 3241 Gifford Lane, Coconut Grove, Florida in a house we shared as man and wife. During 1988 he was working as a law professor in Ohio and returned home to Miami on many occasions.

11. In 1988, when my husband filed for divorce in Ohio without my knowledge, he lived with me as my husband at 3241 Gifford Lane, Miami Florida. We had a joint checking account in Florida and we both used that account to pay for groceries, family expenses, Aaron's clothes, and school expenses and gifts. His name was on the phone bill and the gas bill at the Gifford Lane address. All of my personal mail was sent to me at the Gifford Lane address and my husband was aware of this fact.

12. We moved to Tucson in 1993 from Miami, Florida. We relocated so that my husband could begin a new career and start new businesses.

13. At the time we moved, he told me not to get a legal job, but to get a job earning approximately $25,000 a year and he would monitor the investments and try to start a business. He told me that it was important that I have summers and time off so we could travel and live a certain lifestyle.

14. He also consistently told me that I would just have to work for a few years at which time we could live off his retirement and other investments.

FURTHER AFFIANT SAYETH NOT.

/s/ Susan Ruth Chalker
SUSAN RUTH CHALKER

SUBSCRIBED AND SWORN TO this 30th day of December, 1994, by Susan Ruth Chalker.

/s/ Selma Carrills
NOTARY PUBLIC

My. Commission Expires:
August 25, 1998

APPENDIX 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ROBERT S. CATZ *Petitioner,* vs. SUSAN RUTH CHALKER *Respondent.*	)	Civil Action No. 94-872

PETITION AND NOTICE OF REMOVAL

(Filed Dec. 9, 1994)

The Petition of Removal of Robert S. Catz alleges as follows:

1. On November 4, 1994, an action was commenced against petitioner in the Superior Court of the State of Arizona in and for the County of Pima, entitled *Chalker v. Catz*, No. D-103065, by the service on the petitioner of a summons and complaint at his residence on December 14, 1994. Copies of all relevant pleadings are attached hereto.

2. The above civil action, for which this Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, is one which may be removed to this Court by Petition pursuant to 28 U.S.C. §§ 1441(b) and 1443 in that the removed action originally brought in the Superior Court collaterally attacks on equal protection and due process grounds the constitutional validity of an Ohio state court judgment entered on April 10, 1989 in *Catz v. Chalker*, No. D191073 (Cuyáhoga County Court of Common Pleas, filed December 12, 1988) (a copy of said

judgment is attached hereto) by alleging that the State of Ohio failed to serve her with a Petition for Divorce or similar pleading, nor a judgment or decree purporting to enter a divorce between the parties.

WHEREFORE, Petitioner prays that the above action now pending against him in the Superior Court of Arizona of and for the County of Pima be removed to this Court.

Respectfully submitted,

/s/ Philip Matthew Stinson, Sr.

Philip Matthew Stinson, Sr.
P. O. Box 809
Valley Forge, PA 19482-0809
(610) 525-5040

Attorney for Petitioner

APPENDIX 3

Annette Everlove, Esq.
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Pima County Computer No. 17238

and

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Pima County Computer No. 30244

Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF PIMA

In re the Marriage of: SUSAN RUTH CHALKER, Petitioner, and ROBERT STEVEN CATZ, Respondent, Additional Parties.	NO. D-103065 **NOTICE OF HEARING ON MOTION AND ORDER TO CONTINUE HEARING ON ORDER TO SHOW CAUSE** Assigned to: Judge McDonald

NOTICE IS HEREBY GIVEN that Petitioner, Susan Ruth Chalker, has filed a Motion to Continue Hearing on Order to Show Cause.

NOTICE IS FURTHER GIVEN that a hearing will be held on said Motion on **Monday, the 6th day of February, 1995 at 9:00 a.m.,** before the Honorable Joseph R. McDonald, Pima County Superior Court, 110 W. Congress Street, Tucson, Arizona 85701.

DATED this 25th day of January, 1995.

BUTLER & STEIN, P.C.

/s/ Annette Everlove
Annette Everlove
Attorney for Petitioner

Copy of the foregoing
mailed this 25th day of
January, 1995 to Respondent,
Robert Steven Catz, at the
following addresses:

6241 Tierra de las Catalinas
Tucson, Arizona 85701

6421 Tierra de las Catalinas
Tucson, Arizona 85718

4302 E. Fairmount, No. 23
Tucson, Arizona 85712

730 Harrison Street, #201
San Francisco, CA 94107

c/o Philip Matthew Stinson, Sr.
P.O. Box 809
Valley Forge, PA 19482-0809

with a telephonic message left
on Respondent's answering machine
telephone no. (602) 798-6474,
on January 25, 1995, regarding
hearing date and time, at the Court's
request.

APPENDIX 4

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF PIMA

In re the Marriage of:	
SUSAN RUTH CHALKER,	
Petitioner,	No. D-103065
vs.	
ROBERT STEVEN CATZ,	
Respondent.	

RESPONDENT'S RESPONSE TO PETITIONER'S MOTION TO CONTINUE HEARING ON ORDER TO SHOW CAUSE

Respondent hereby responds to petitioner's Motion to Continue Hearing on Order to Show Cause, and avers as follows:

1. The parties were married on April 13, 1980, in Washington, D.C. The parties have a minor son, Aaron Catz, currently age 14.

2. On April 10, 1989, the Cuyahoga County, Ohio, Court of Common Pleas, issued a divorce, in Catz v. Catz. A copy of said decree is attached an exhibit to Respondent's Emergency Motion to Dismiss filed in this Court on December 14, 1994.

3. The parties' Ohio decree of divorce judgment is presumptively valid under Arizona law. *See, e.g., Carnahan v. Carnahan,* 290 P.2d 729, 730-31 (Ariz. Supr. Ct.

1950). Furthermore, a litigant attacking a sister state judgment in a divorce case has a heavy burden. *See, e.g., Williams v. North Carolina*, 325 U.S. 226, 233-234 (1945).

4. All of respondent's assets were attached by Order of this Court on December 1, 1994, by an *ex parte* temporary restraining order, without hearing, and without notice to respondent.

5. As a direct result of this Court's issuance of the temporary restraining order and subsequent attachment, respondent has become homeless; suffered extreme financial hardship; is unable to financially support himself; has ceased operations of his businesses in Tucson for want of operating capital; is unable to financially support the parties minor child; and has been forced to place his personal belongings in storage and relocate to Tennessee, where he is currently residing with his 26 year-old son in a small one bedroom apartment. As of this date, respondent has less than $750.00 in personal assets upon which to support himself.

6. At all times between 1989 and this Court's issuance of the temporary restraining order, respondent has paid regularly child support for Aaron, currently in the amount of $825.00 per month (an mount [sic] equal to petitioner's rent).

7. The temporary restraining order was issued *ex parte* without any demonstration by petitioner of the likelihood of successfully attacking the state court judgment, which is a legal predicate to her being able to secure relief from this Court. Yet it has been more than seven weeks since respondent filed an Emergency Motion to Dismiss on the grounds that this action is barred by claim/issue

preclusion and, therefore, entitled to full faith and credit under Article IV, Section I, of the United States Constitution and 28 U.S.C. § 1738. In the seven week period, not only has petitioner failed to file a responsive pleading and, thereby, address the significant and dispositive issue in the case, but has never even sought an order extending the time to reply, therefore placing petitioner in default. *See* attached Motion of Respondent filed this date. Nor has petitioner ever stated on the record precisely how she intends to collaterally attack the Ohio judgement. *See Coffee v. National Equipment Rental, Ltd.*, 451 P.2d 329, 331 (Ariz. Ct. App. 1969).

8. Respondent's family has recently established a small trust fund for the support of the parties minor child, Aaron, in the amount of $400.00 per month, to be paid until such time as respondent's monies are released by this Court so that he will provide support for his son.

9. Petitioner – by averring that she is in need of a continuance because she needs to attend a professional conference in Phoenix – has failed to aver good cause as to why her Show Cause hearing should be continued.

WHEREFORE, respondent requests the following relief:

(a) the the court issue an order setting a date certain by which respondent must file an opposition to the Motion to Dismiss, and that her failure to do so will so deem the matter for adjudication without more;

(b) that no hearings in this case be rescheduled until such time as petitioner files a reply to respondent's Motion to Dismiss; or in the alternative, until the time designated by the

Court expires for petitioner to file such reply;

(c) that the Show Cause hearing be rescheduled for a date subsequent to March 15, 1995, as respondent will be on the East Coast of the United States searching for employment, and has several interviews scheduled in late February and early March; and,

(d) that the temporary restraining order attaching all of respondent's monies be vacated and that the standard preliminary Injunction issued on November 4, 1994, remain in full force and effect.

Respectfully submitted,

/s/ Robert S. Catz
Robert S. Catz
1402 17th Avenue, Apt. B
Nashville, TN 37212
(615) 298-4706

Respondent, *Pro Se*

APPENDIX 5

BUTLER & STEIN, P.C.

ATTORNEYS AT LAW
110 SOUTH CHURCH AVENUE
SUITE 9300
TUCSON, ARIZONA 85701

A. BATES, BUTLER III*
ALAN L. STEIN* ‡
ANNETTE EVERLOVE
JEAN MOSKOW

TELEPHONE:
(602) 628-1618
FAX (602) 629-0197

* ALSO ADMITTED IN COLORADO
‡ ALSO ADMITTED IN DISTRICT OF COLUMBIA

February 15, 1995

(Dictated February 14, 1995)

Via Telefax and First Class Mail

Philip Matthew Stinson, Sr., Esq.
P.O. Box 809
Valley Forge, PA 19482-0809

RE: Chalker/Catz Dissolution
Pima County Cause No. D-103065

Dear Mr. Stinson:

This letter confirms today's telephone conversation where you called to inform me that you will be representing Robert Catz in the above-referenced domestic relations matter.

I advised you of the pending hearing on Petitioner's Motion for Sanctions scheduled for March 2, 1995 at 9:30 a.m. and the continued hearing on Order to Show Cause set on March 14, 1995 at 9:00 a.m. In addition to a copy of

the Notice of Hearing on Petitioner's Motion for Sanctions, I enclose copies of the Motion for Sanctions and Petitioner's Opposition to Respondent's Motion to Dismiss (which you will note was filed and mailed to Mr. Catz on December 30, 1994).

During our conversation you made, *inter alia,* the following statements and/or representations:

(1) we had attached all of Mr. Catz' assets and there were absolutely no additional assets, but then asked me if I knew of any additional assets;

(2) information regarding the source of trust funds referred to in a letter from Rochelle Catz to Ms. Chalker was confidential, that it was not Mr. Catz' money but rather from people who have taken an interest in providing for Aaron's support;

(3) you intend to sue Ms. Chalker for illegally using Mr. Catz' PIN number to access deposit information at Riggs Bank;

(4) Mr. Catz informed a representative of Geico Insurance Company, (an individual whom, as I told you, I had instructed to contact Mr. Catz), within the last two days, that Ms. Chalker's claim for property damage reimbursement from her recent automobile accident constituted "a fraudulent insurance claim" and that neither Ms. Chalker nor her vehicle are insured in that Ms. Chalker had bought Mr. Catz' car and that you had a bill of sale to prove it. Responsive to my question as to when this purported sale took place and the purchase price of the vehicle, you, after apparently looking for the document, stated that you could not locate the bill of sale at this time;

(5) upon Mr. Catz leaving Arizona, he deposited into your care a "pile of papers" that you were "proud to say" you had not touched.

I reiterate the observation made to you that Mr. Catz' outrageous representations to the insurance company, and his position that Ms. Chalker is not insured, is very dangerous. Due to Mr. Catz' continued machinations, Ms. Chalker has been unable to negotiate the property damage reimbursement check in the approximate sum of $4,800.00, cannot purchase a replacement vehicle, and thus has been reliant upon a rented vehicle. Request is made that you ask your client to re-think his position in this regard and instruct Geico Insurance to issue a check to Ms. Chalker in her name alone, and correct his misrepresentation to the insurance company as to her lack of insured status.

Lastly, I concluded our conversation by telling you that, both pertaining to the domestic relations action and matters filed in federal court, all communication between you and this firm, as well as between you, Mr. Karp and his firm, must be in writing.

Very truly yours,

BUTLER & STEIN, P.C.

/s/ Annette Everlove
Annette Everlove

Enclosures: As stated
cc: S. Chalker w/o enclosures
AE:smh

APPENDIX 6

Annette Everlove, Esq.
BUTLER & STEIN, P.C.
110 South Church Ave.
Suite 9300
Tucson, Arizona 85701
(602) 628-1618
Pima County Computer No. 17238

and

Leonard Karp, Esq.
KARP & WEISS, P.C.
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Suite 1800
Tucson, Arizona 85701
(602) 882-9705
Pima County Computer No. 30244

Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

In re the Marriage of: SUSAN RUTH CHALKER, Petitioner, and ROBERT STEVEN CATZ, Respondent, Additional Parties.	NO. D-103065 **NOTICE OF HEARING ON PETITIONER'S MOTION FOR SANCTIONS/MOTION TO STRIKE PLEADING** Assigned to: Judge McDonald

NOTICE IS HEREBY GIVEN that Petitioner, Susan Ruth Chalker, has filed a Motion for Sanctions/Motion to Strike Pleading.

NOTICE IS FURTHER GIVEN that a hearing will be held on said Motion on Thursday, the 2nd day of March, 1995 at 9:30 a.m., estimated time: 30 minutes.

before the Honorable Joseph R. McDonald, Pima County Superior Court, 110 W. Congress Street, Tucson, Arizona 85701.

DATED this 10th day of February, 1995.

BUTLER & STEIN, P.C.

/s/ Annette Everlove
Annette Everlove
Co-Counsel for Petitioner

Copy of the foregoing
mailed this 10th day of
February, 1995 to:

Mr. Robert S. Catz
c/o Shawn D. Catz
1402 – 17th Ave. #B
Nashville, TN 37212
Respondent

WITH CONFORMED COPY TO FOLLOW

ARIZONA SUPERIOR COURT, PIMA COUNTY

Judge: Pro Tempore Joseph R. McDonald

CASE NO. D-103065

DATE March 2, 1995

Court Reporter: None

In re the Marriage of ( )

SUSAN RUTH CHALKER, ( )
Petitioner

and ( )

ROBERT STEVEN CATZ, ( )
Respondent

( )

EVENT SUMMARY

TYPE: Under Advisement Ruling Result:

Date: Time: Length: Div: Reg:

TYPE: Result:

Date: Time: Length: Div: Reg:

TYPE: Result:

Date: Time: Length: Div: Reg:

TYPE: Result:

Date: Time: Length: Div: Reg:

MINUTE ENTRY

UNDER ADVISEMENT RULING

RE: PETITIONER'S MOTION FOR SANCTIONS

The Court has heard the arguments of counsel for petitioner, respondent not appearing in person or by counsel, and finds as follows:

1. Respondent was served with the summons, amended petition for dissolution and various other documents described in the return of service on December 14, 1994 in Tucson, Pima County, Arizona. The documents with which respondent was then served included uniform interrogatories and a request for production of documents.

2. On the same date, December 14, 1994, respondent filed his emergency motion to dismiss the amended petition. Petitioner has filed her written opposition to this emergency motion. The emergency motion had as respondent's address the same address where he was served earlier in the day.

3. On December 19, 1994, respondent filed a petition and notice of removal of this dissolution proceeding to the United States District Court for the District of Arizona at Tucson. The basis alleged by respondent in the petition for removal was that the dissolution petition filed in this court represented an attack on the constitutional validity of an Ohio decree of divorce entered April 10, 1989. The matter was remanded to this court by the U.S. District Court, Marquez, J.

4. On December 22, 1994, respondent was noticed for deposition on January 3, 1995. Because of the removal and subsequent remand, the deposition was reset for

February 9, 1995, and the notice was issued January 24, 1995.

5. Since December 14, 1994, respondent has apparently moved from Tucson and has failed to provide the court or opposing counsel with a current address as he is required to do under Rule 12(a), Uniform Rules of Practice for the Superior Court. As a consequence, counsel for petitioner has been required to send copies of pleadings to respondent at five different addresses.

6. On February 6, 1995, by minute entry order, respondent was directed to provide opposing counsel and the court with a single address where he will henceforth receive all process, pleadings and notices. Respondent has failed to do so.

7. In the same minute entry order, respondent was directed to appear for his deposition on February 9, 1995. Again, respondent has failed to comply.

8. Respondent has not answered uniform interrogatories served upon him on December 14, 1994, nor has he produced the documents set forth in the request for production similarly served upon him on the same date.

9. Respondent has failed to participate in discovery as required by the Arizona Rules of Civil Procedure and that failure is willful, deliberate and in bad faith. Respondent is subject to sanctions as set forth and permitted in Rules 16(f), 26(f) and 37(b), Arizona Rules of Civil Procedure.

10. Petitioner is entitled to an award of all fees and costs associated with respondent's failure to comply with discovery requests.

THEREFORE, IT IS ORDERED:

1. Respondent is in contempt of the Court's orders regarding discovery.

2. Respondent is subject to sanctions and will be sanctioned in accordance with Rules 16(f), 26(f) and 37(b), Arizona Rules of Civil Procedure.

3. Petitioner is awarded her fees and costs associated with respondent's failure to comply with discovery. Ms. Everlove will submit the appropriate affidavit.

4. As a sanction, the default of respondent, Robert Steven Catz, is herewith entered. The hearing currently set on petitioner's OSC on March 14, 1995 shall be limited to entry of a default judgment pursuant to Rule 55(b), Arizona Rules of Civil Procedure.

The Court signs this minute entry in lieu of a formal order.

/s/ Joseph R. McDonald
Joseph R. McDonald
Judge Pro Tempore

Copies to:
Hone. Joseph R. McDonald
Annette Everlove, Esq.
Leonard Karp, Esq.
Robert S. Catz, c/o Shawn D. Catz, 1402 17th Ave., #B, Nashville, TN 37212
Under Advisement Clerk
Court Administrator

Beth Hoover/lf
Deputy Clerk

APPENDIX 7

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ROBERT S. CATZ, Petitioner, vs. SUSAN RUTH CHALKER, Respondent.	)	No. CV-94-872-TUC-ACM

SECOND PETITION AND NOTICE OF REMOVAL

The Second Petition of Removal of Robert S. Catz, alleges as follows:

1. Respondent Chalker filed a Petition for Dissolution of Marriage in the Pima County Superior Court of the State of Arizona on November 4, 1994 entitled *Chalker v. Catz*, No. D-103065.

2. On December 14, 1994, petitioner Catz filed an Emergency Motion to Dismiss Petition for Dissolution of Marriage in the Pima County Superior Court of the State of Arizona.

3. On December 19, 1994, petitioner Catz removed the case to this Honorable Court.

4. Respondent Chalker filed a Motion to Remand the instant action to the Pima County Superior Court of the State of Arizona on December 28, 1994.

5. On January 12, 1995, this Honorable Court granted respondent's motion, and the case was remanded

to the Pima County Superior Court of the State of Arizona, on the grounds that respondent had not challenged the constitutional validity of a prior judgment of divorce entered by the state of Ohio.

6. On February 14, 1995, counsel for petitioner discovered that on December 30, 1994 – some ten days after the instant action was removed from state court, and on the same day that respondent filed her Motion to Remand – respondent filed an Opposition to Catz's Motion to Dismiss Petition for Dissolution of Marriage in the Pima Court Superior Court of the State of Arizona.

7. Respondent Chalker, in her Opposition to Catz's Motion to Dismiss Petition for Dissolution of Marriage filed on December 30, 1994, in the Pima County Superior Court of the State of Arizona, challenges the constitutional validity of the prior judgment of divorce entered by the State of Ohio by arguing, *inter alia*, that the Ohio Court did not possess subject matter jurisdiction; the Ohio Court lacked personal jurisdiction over Chalker; and, the Ohio judgment was obtained by fraudulent representations. *See* Exhibit 1 (pp. 3-6).

8. On December 30, 1994, respondent and her counsel knew that the instant case was pending in federal court; that the Pima County Superior Court of the State of Arizona did not have jurisdiction over the case; that all pleadings were properly to be filed in the United States District Court for the District of Arizona; and, that the undersigned counsel was attorney of record to accept service of all pleadings in the instant action.

9. At no time did counsel for respondent serve a copy of the Opposition to Catz's Motion to Dismiss Petition for Dissolution of Marriage on the undersigned counsel for petitioner, nor was a copy of the Opposition filed with the Office of the Clerk of Court at the U.S. District Court in Tucson.

10. Respondent Chalker and her counsel committed a fraud and gross misrepresentation upon this Honorable Court by attempting to hide the federal question until after this Court ruled on respondent Chalker's then-pending Motion to Remand through challenging the constitutional validity of the prior judgment of divorce entering by the State of Ohio in a pleading filed in a state court which respondent and her counsel knew did not have jurisdiction over the case.

11. This Court has original jurisdiction in the instant matter pursuant to 28 U.S.C. § 1331 and 1343, and this case may be removed to this Court by Petition pursuant to 28 U.S.C. § 1441(b), 1443, and 1446(b), in that respondent Chalker collaterally attacks on equal protection and due process grounds the constitutional validity of an Ohio state court judgment entered on April 10, 1989 in *Catz v. Chalker,* No. D191073 (Cuyahoga County Court of Common Pleas, Filed December 12, 1988).

12. A second removal following remand to state court is proper upon pleading of a federal question. *See Dodd v. Fawcett Publs., Inc.,* 329 F.2d 82, 85 (10th Cir. 1964) (fraudulent joinder in diversity action served to frustrate federal jurisdiction and removal was proper following remand); *Kulbeth v. Woolnought,* 324 F. Supp. 908, 910 (S.D. Tex. 1971) (A second removal petition may be filed if

subsequent pleadings or conduct of the parties make removable a case not previously removable).

WHEREFORE, Petitioner prays that the above action now pending against him in the Superior Court of Arizona of and for the County of Pima be removed to this Court.

Respectfully submitted,

/s/ Philip Matthew Stinson
Philip Matthew Stinson, Jr.
P. O. Box 809
Valley Forge, PA 19482-0809
(610) 525-5040

Attorney for Petitioner Catz

APPENDIX 8

Annette Everlove, Esq.
BUTLER & STEIN, P.C.
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(602) 628-1618
Pima County Computer No. 17238

and

Leonard Karp, Esq.
KARP & WEISS, P.C.
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(602) 882-9705
Pima County Computer No. 30244

Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

In re the Marriage of:	
SUSAN RUTH CHALKER,	NO. D-103065
Petitioner,	**DECREE OF DISSOLUTION OF MARRIAGE**
and	
ROBERT STEVEN CATZ,	(Filed Mar. 14, 1995)
Respondent, Additional Parties.	Assigned to: Judge McDonald

This matter coming on regularly to be heard before the Court on March 14, 1995, and Petitioner being present in person and through her attorneys, Annette Everlove and Leonard Karp; the Respondent not appearing; this

Court having acquired jurisdiction over the Respondent on December 14, 1994 by personal service upon him of the Amended Petition for Dissolution, Summons, Preliminary Injunction, and other pleadings, all as set forth in that certain Affidavit of Return of Service dated December 15, 1994; Respondent not having responded to Petitioner's Request for Production of Documents served upon him on December 14, 1994; Respondent not having answered Uniform Domestic Relations Interrogatories served upon him on December 14, 1994; Respondent failing to attend his deposition duces tacum scheduled for February 9, 1995; Respondent failing to obey this Court's Minute Entry Order dated February 6, 1995, and having been found in contempt of Court, all as set forth in this Court's Minute Entry Order dated March 2, 1995, and default against Respondent having been entered and evidence having been presented and considered, the Court finds as follows:

1. Petitioner and Respondent were domiciled in the State of Arizona for at least ninety days prior to the filing of the Petition for Dissolution of Marriage.

2. Any judgment on the divorce purportedly heretofore obtained by Respondent against Petitioner in the State of Ohio, County of Cuyahoga, is null and void having been fraudulently obtained and further this Court shall not give full faith and credit to said judgment.

3. The conciliation provisions of A.R.S. § 25-381, as amended, either do not apply or have been met.

4. The marriage of the parties is irretrievably broken with no reasonable prospect of reconciliation.

5. There is one minor child the issue of this marriage, to wit: Aaron Michael Catz, date of birth October 15, 1980.

6. To the extent it has jurisdiction to do so, this Court has considered, approved and made provision for the custody and support of the parties' minor child, maintenance and support of the parties, division of community and other joint or common debts, obligations and property of the parties.

7. Petitioner shall have sole legal and physical custody of the parties' minor child with such visitation in Respondent as Petitioner, in her sole discretion, deems appropriate.

8. Respondent has been employed as a professor of law from 1979 until approximately 1993, first at Cleveland Marshall School of Law and later at District of Columbia School of Law, and the Court attributes income to him based upon income earnings ability of $73,000.00 per annum.

9. Petitioner shall be entitled to an award of child support pursuant to Arizona Child Support Guidelines as set forth in the Child Support Order and Order of Assignment submitted herewith and signed by the Court this date. Said child support award shall be effective January 1, 1995 with no offset in Respondent for any sums paid to date.

10. Petitioner satisfies the statutory requirements of A.R.S. § 25-319(A) and is in need of, and entitled to, an award of spousal maintenance, in that Petitioner lacks sufficient property, including property awarded herein, to

provide for her reasonable needs and has, at Respondent's urging, become a contract elementary school teacher with no tenure, nor tenure possibility with her present employer.

11. During the pendency of these proceedings, Petitioner sustained an insurable loss on her automobile in the sum of $4,800.00 which Respondent's conduct has precluded Petitioner from collecting.

12. Respondent has secreted, dissipated and/or otherwise failed to account for substantial community funds and assets.

13. The terms of this Decree are fair and equitable given the Court's finding of Respondent's dissipation, secreting and/or failure to account for marital assets.

NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The marriage previously existing between the parties is dissolved.

2. Petitioner shall have sole legal and physical custody of the parties' minor child, Aaron Michael Catz, with such visitation in Respondent as Petitioner, in her sole discretion deems appropriate.

3. Respondent shall pay to Petitioner as and for child support the sum of $700.00 per month commencing January 1, 1995 pursuant to the Child Support Order signed this date.

4. Petitioner shall be entitled to claim Aaron as a dependent for income tax purposes for tax year 1994 and all years subsequent thereto.

5. Respondent shall pay to Petitioner as and for spousal maintenance the sum of $1,000.00 per month commencing January 1, 1995.

6. Petitioner is awarded as her sole and separate property all right, title and interest in and to the following investments, bank and/or retirement accounts:

A. Fidelity Latin American Fund (7,926.390 shares valued at $92,659.49 as of January 17, 1995);

B. Fidelity Southeast Asia Fund (15,644.564 shares valued at $186,639.64 as of January 17, 1995);

C. Fidelity U.S. Government Reserves (balance unknown);

D. Waterhouse Securities, Inc., account no. 301-10632 (approximate value as of February 22, 1995 – $120.00);

E. Waterhouse Securities, Inc., IRA-SEP account No. 301-10633 (approximate value as of February 22, 1995 – $1,410.00);

F. Waterhouse Securities, Inc., IRA account no. 301-10634 (approximate value as of February 22, 1995 – $13,529.00);

G. CREF Retirement Annuity, Certificate number Q866023-8, Global Equities Account (approximate value $10,116.71);

H. CREF Supplemental Requirement Annuities, certificate no. J091114-7, Global Equities Account (approximate value $424,055.24);

I. TIAA Transfer Payout Annuity, contract no. IE42653-2 (approximate value $36,654.54);

J. Petitioner's State of Arizona Retirement (approximate value $ 230.00);

K. Petitioner's automobile 1989 Honda Accord;

L. All personal property in Petitioner's possession;

M. All bank accounts standing in Petitioner's name;

N. All bank accounts standing in Aaron's name.

7. As to those items set forth in ¶ 6 (G), (H) and (I) above, all right, title and interest shall be transferred to Petitioner by a Qualified Domestic Relations Order. The Court retains jurisdiction to enter such other QDRO's or other orders as are necessary to assure transfer to Petitioner of the property awarded to her hereunder.

8. Respondent is awarded all right, title and interest in and to his pension and/or retirement plan through the State of Ohio, current balance unknown.

9. The Court retains jurisdiction pursuant to A.R.S. § 25-318(B) to divide additional marital property which remains unknown by Petitioner and undisclosed by Respondent.

10. Respondent shall pay and hold Petitioner harmless from all debts of any kind or nature incurred by the parties during marriage, including all tax liability, whether incurred in his name, Petitioner's name or both names except for the following:

A. loan from Bernice Mennis to Susan Chalker in the principal sum of $7,300.00;

B. those certain credit card debts set forth in Petitioner's spousal affidavit dated November 4, 1994.

11. Judgment is entered in favor of Petitioner and against the Respondent in the sum of $4,800.00 as and for the insurable loss on her automobile, which Respondent's conduct has precluded her from collecting.

12. Judgment is hereby entered in favor of Petitioner and against the Respondent for child support and spousal maintenance accrued from January 1 to March 1, 1995 in the sum of $3,000.00.

13. Petitioner is entitled to payment of her attorneys' fees and costs incurred in this matter and judgment thereon shall be entered by this Court by separate judgment or order upon filing by counsel for Petitioner of appropriate affidavits pursuant to *China Doll Restaurant Inc. v. Schweiger*.

14. Interest shall run on all monies adjudged to be owing Petitioner from Respondent at the legal rate of interest from entry of judgment until paid in full.

DONE IN OPEN COURT this 14 day of March, 1995, at 10 AM.

/s/ J. R. McDonald
Honorable
Joseph R. McDonald
Pima County Superior Court

APPENDIX 9

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ROBERT S. CATZ, Petitioner, vs. SUSAN RUTH CHALKER, Respondent.	No. CIV 94-872 TUC ACM ORDER (Filed Mar. 31, 1995)

I. Facts:

Respondent Susan Ruth Chalker ("Chalker") filed a Petition for Dissolution of Marriage in the Pima County Superior Court of the State of Arizona on November 4, 1994 entitled *Chalker v. Catz*, No. d-103065 ("State Case"). On December 14, 1994, Catz filed an Emergency Motion to Dismiss Petition for Dissolution of Marriage in the State Case. On December 19, 1994, Petitioner Robert S. Catz ("Catz"), Removed the State Case to the United States District Court for the District of Arizona. On December 28, 1994, Chalker filed a Motion to Remand this case to the Pima County Superior Court of the State of Arizona. On January 12, 1995, this Court granted Chalker's Motion, and the case was remanded to the Pima County Superior Court. On December 30, 1994, Chalker filed her Opposition to Catz's Motion to Dismiss in the State Case. A default judgment was entered against Catz on March 14, 1995 at approximately 10 a.m.

On March 14, 1995, Catz filed a Second Petition and Notice of Removal of the State Case to this Court. On March 28, 1995, Chalker filed a second Motion to Remand to state court.

II. DISCUSSION:

Catz argues that a second removal following remand to state court is proper upon pleading a federal question. Catz contends that Chalker asserts constitutional arguments in her opposition to Catz's Motion to Dismiss Petition for Dissolution of Marriage in the State Court case.

According to *Evak Native Village v. Exxon Corp.*, 25 F.3d 773 (9th Cir. 1994),

> If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defender, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable. . . .

Id. at 779 (quoting 28 U.S.C. § 1446(b)). Although it is not clear from the pleadings, apparently, Catz argues that the Opposition filed by Chalker in the state case constitutes the "other paper" justifying the removal. This Court does not agree.

In Chalker's Opposition, she claims that the Ohio Court did not possess subject matter jurisdiction because she was not served with the papers indicating that a divorce proceeding had been commenced against her.

Chalker also asserts that the Ohio Court lacked personal jurisdiction over her because she never resided in Ohio. In addition, Chalker argues that the Ohio judgment was obtained by fraudulent representations. The aforementioned arguments are the same arguments which Chalker made prior to the first Notice of Removal. In order to permit granting of a second petition for removal, there must be both an amended pleading or paper and a ground for asserting removability that exists for the first time. *O'Bryan v. Chandler,* C.A.10 (OKL.) 1974, 496 F.2d 403, certiorari denied 95 S.Ct. 245, 419 U.S. 986, 42 L.Ed.2d 194, rehearing denied 95 S.Ct. 838, 420 U.S. 913, 42 L.Ed.2d 845. This Court finds that Chalker's Opposition to Catz's Motion to Dismiss in the State Case does not present a federal question, therefore, the State Case is not removable.

In addition, upon a valid removal, the federal court takes the case as it finds it. *Butner v. Neustader,* 324 F.2d 783 (9th Cir. 1963). On March 14, 1995, a Decree of Dissolution of Marriage was entered in the State Case. Judge McDonald in the Superior Court of the State of Arizona in and for the County of Pima determined the issues which Catz believed were appropriate for this Court's determination.

For the same reasons stated herein, Catz's most recent motion filed March 30, 1995, asking this Court to vacate the January 12, 1995 Order remanding this case back to the state courts is without merit.

III. CONCLUSION:

Accordingly,

IT IS ORDERED that Respondent's Second Motion to Remand is GRANTED.

IT IS FURTHER ORDERED that Petitioner's Motion for Relief from Judgment filed March 30, 1995, is DENIED.

IT IS FURTHER ORDERED that the Clerk of the Court is to accept no further pleadings in this matter without permission from this Court.

Dated this 31st day of March, 1995.

/s/ Alfredo C. Marquez
ALFREDO C. MARQUEZ
Senior Judge

APPENDIX 10

[p. 1] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT KATZ,

Plaintiff,

vs.

SUSAN CHALKER, et al.,

Defendants.

Case No. 1:95CV1652
Cleveland, Ohio
SEPTEMBER 29, 1995
2:00 P.M.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN M. MANOS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: REGINALD MAXTON, ESQ.,
JAMES TANNER, ESQ.,

For the Defendant: MARK COHN, ESQ.,
RICHARD RABB, ESQ.,
McCarthy, Lebit, Crystal & Heiman, Co. L.P.A.
1800 Midland Building
101 Prospect Avenue, West
Cleveland, OH 44115
(216) 696-1422

For the Defendant,
Fidelity Service Co.: JORDAN BERNS, ESQ.,

Court Reporter: Shirle M. Perkins
201 Superior Avenue, Room 539
Cleveland, Ohio 44114-1201
(216) 241-5622

Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

[p. 2] FRIDAY SESSION, SEPTEMBER 29, 1995, at 2:00 P.M.

THE COURT: You want to identify yourselves for the record.

MR. MAXTON: I'm Reginald Maxton, attorney-at-law.

THE COURT: You represent who?

MR. MAXTON: Representing the Plaintiff, Robert Katz.

THE COURT: Speak louder because I can't hear you.

MR. MAXTON: Representing the Plaintiff, Robert Katz.

THE COURT: Is he here?

MR. MAXTON No, he's not.

MR. TANNER: I'm James Tanner, also representing Robert Katz. Mr. Katz is available by telephone from his home in Tennessee.

THE COURT: Is he domiciled in Southington, Ohio?

MR. TANNER: I'm sorry?

THE COURT: Is he domiciled in Southington, Ohio.

MR. TANNER: At the present time, he's down in Tennessee.

THE COURT: The answer is he's not domiciled in Ohio?

MR. TANNER: That's correct, sir, yes.

THE COURT: OKAY.

You want to identify yourself?

[p. 3] MR. COHN: Yes. My name is Mark Cohn, C-o-h-n, with the firm of McCarthy, Lebit, Crystal, and Haiman. I've been retained this morning, and I'm here this afternoon on behalf of Susan Chalker, Annette Everlove, and Leonard Karp.

And if I may, to my right is Richard Rabb, an associate with my firm. He's also going to be working with me.

MR. BERNS: My name is Jordan Berns, B-e-r-n-s, and I'm here on behalf of Fidelity Service Company.

THE COURT: You're not here on behalf of the Arizona court?

MR. BERNS: No. I don't think they managed to get somebody out here quick enough.

THE COURT: Okay.

MR. MAXTON: Judge, there's one preliminary matter.

Mr. Tanner is not licensed in the federal bar at the time, and I'd like to make a motion that he be admitted pro hoc vice for this proceeding.

THE COURT: I can't admit him if he's – if he isn't a member of the bar here, never applied for it, I can't admit him.

MR. MAXTON: All right.

THE COURT: I can't make him a member of the bar, but I'll let him participate.

[p. 4] MR. MAXTON: Thank you, your Honor.

MR. TANNER: If I may clarify, I was admitted to the practice of law in the State of Ohio before –

THE COURT: I don't care.

MR. TANNER: – before the Ohio Supreme Court.

THE COURT: You have to also apply for the Federal Court. If you haven't applied, you're – off the record.

THE COURT: You want to be heard?

MR. TANNER: Thank you, your Honor. Today, Mr. Katz seeks temporary restraining order enjoining the dissipation of funds that are filed by defendants, Fidelity Investments, Inc., Waterhouse Securities, and TIAA/CREF.

Essentially, the basis of a request is that there are at this time two conflicting state court decisions as to who those funds belong to.

In 1989, Mr. Katz secured a divorce from Ms. Chalker in the Ohio State Court. Subsequent thereto, in 1994, Ms. Chalker filed for a dissolution in the state of Arizona and

subsequently was given a default dissolution in Arizona, in which she was awarded essentially all of Mr. Katz's assets, which accumulated substantially subsequent to the divorce in Ohio.

There's questions as to –

THE COURT: Let me ask this question.

[p. 5] He was in Ohio, and he was teaching at Cleveland Marshal Law School?

MR. TANNER: That's correct, sir.

THE COURT: And he filed for a divorce. His wife was living in Florida?

MR. TANNER: That's correct.

THE COURT: With their son? And on weekends or on days of holidays, he would go to Florida to be with his wife? Yeah?

MR. TANNER: Your Honor, as to the weekends –

THE COURT: Yes or no?

MR. TANNER: No, that's not correct.

THE COURT: He didn't go to –

MR. TURNER: He went to Florida but not to visit his wife.

THE COURT: He went to Florida, but not to visit his wife?

MR. TANNER: That's correct.

THE COURT: And he didn't visit his wife?

MR. TANNER: He may have visited her. On some occasions, they may have seen each other during that period of time, correct.

THE COURT: All right.

It came to pass that he left the City of Cleveland and went, I think, to Washington, taught as some law school [p. 6] there.

MR. TANNER: District of Columbia School of Law.

THE COURT: District of Columbia Law School.

At some point in time, terminated that relationship. He went to Florida, and with his wife and child he traveled to Arizona where they set up a home where they set – they made a home for themselves, and he wanted to operate a bar, and his wife wanted to teach school, both of whom were lawyers but neither of whom wished to pursue practice of law, and I think they were together for about a year, after which they separated again, and she filed for dissolution of the divorce, right? Is that right so far?

MR. TANNER: Essentially, that's correct.

THE COURT: Essentially, that's correct?

MR. TANNER: There was an attempt at a reconciliation between the two of them, which was around the time.

THE COURT: I said they lived together for about a year, didn't I?

MR. TANNER: That's correct.

THE COURT: And that is correct, isn't it?

MR. TANNER: Yes.

THE COURT: after which, he left the house?

MR. TANNER: That's correct.

THE COURT: And following the departure of [p. 7] Mr. Katz, she filed for dissolution –

MR. TURNER: That's correct, sir.

THE COURT: – of the divorce.

At some point in time, he left to go to Tennessee, where he lived with his son from another marriage, right?

MR. TANNER: That's correct.

THE COURT: Okay.

And there was some problems in connection with notice of a divorce that was filed for by the wife, problems about pending hearings, to which he never got notice, but he availed himself of the jurisdiction of that court by filing motion inside that court, did he not?

MR. TANNER: That's correct.

THE COURT: He filed any number of motions, right?

MR. TANNER: That's correct.

THE COURT: Okay.

And ultimately, he filed a motion removing the case from the Arizona divorce court to the Federal Court, which court remanded it back to the Arizona court because it had no jurisdiction?

MR. TANNER: That's correct, sir.

THE COURT: He then filed an action in the Federal Court in Arizona, charging his wife's lawyers and his wife with a 1983 violation of abridgement of constitutional right [p. 8] under color of state law, right?

MR. TANNER: That's correct, sir.

THE COURT: And as well, a declaratory judgment seeking that court to recognize the Ohio divorce and to declare any action taken by the Arizona court to be null and void?

MR. TANNER: Yes, sir.

THE COURT: Is that essentially correct?

MR. TANNER: That's essentially correct, sir.

THE COURT: Jordan; is that correct?

MR. BERNS: My understanding is that that is correct.

THE COURT: I didn't ask about your understanding. I asked you whether it's correct?

MR. BERNS: It is.

THE COURT: You externed here for a summer, and you were brilliant, and you were taught not to think, to say, "I think," right?

MR. BERNS: I was taught that and more.

THE COURT: In 1983, action was dismissed with prejudice by the Federal Court, right, insofar as the wife was concerned, and the declaratory judgment action

was dismissed with prejudice, the action against the lawyers was withdrawn without prejudice, right?

MR. TANNER: That's essentially correct, sir.

[p. 9] THE COURT: What you mean essentially? I don't like the word essentially.

MR. TANNER: That's correct, your Honor.

THE COURT: Aren't you teaching him right, Chris? You're Russell?

MR. MAXTON: Reginald.

THE COURT: It says here Reginald. Are you Reginald or Russell?

MR. TANNER: Reginald.

THE COURT: Reginald? I'm calling you Reginald. All right?

Well, that Court knocked out the declaratory judgment action with prejudice, knocked out the case against the wife for 1983 violation of abridgement of constitutional right under color of state law, and the lawsuit against the lawyers was withdrawn without prejudice, right?

MR. TANNER: That's correct.

THE COURT: Okay. Now, he's in Tennessee, right?

MR. TANNER: That's correct.

THE COURT: And now, he seeks to avail jurisdiction of this Court by filing a TRO, in which he alleges

a violation of his constitutional rights under color of state law 1983 action as against his wife, and then as against her lawyer, right?

MR. TANNER: That's correct, you Honor.

[p. 10] THE COURT: And he asks for a declaratory judgment, doesn't he, Reginald?

MR. MAXTON: That's correct.

THE COURT: And he wants this Court to decide that it is the Ohio Court, and the divorce obtained there, that if the court in which the relationship between his wife and him is determined, and that the Arizona court has done a futile thing in not recognizing the decree of that position by the Ohio State court, right?

MR. TANNER: That's correct, sir.

THE COURT: All right.

Now, if I were to ask Jordan what the standards are for TRO, he would tell me, "Judge, the first point is there is a likelihood of success on the merits, and it's a standard. Secondly, the judge must look at departure facing the parties seeking the temporary restraining order for which there is no adequate remedy at law prior to the party against which the TRO was directed and the public interest. Those are the standards."

Now, how do I have jurisdiction over a person – jurisdiction over the wife, the lawyers who she retained in Arizona, and over the Arizona court?

Now, I'm sure that you're probably saying that I have jurisdiction because there's diversity, but I don't have anyone domiciled here, do I, Mark?

[p.11] MR. COHN: No, you don't.

THE COURT: No one domiciled here, in persona jurisdiction. And you heard what I said about 1983 action, which is an abridgement of one's constitutional rights under color of state law. His wife is not a state actor. The lawyers representing her aren't state actors. 1983 action is out, can't be considered. It's something that can't be before this Court unless you look – off the record.

(Discussion had off the record.)

THE COURT: Now, you heard what the standards are. Tell me what the likelihood of success is on the merits.

MR. TANNER: Your Honor, the – as to the diversity action?

THE COURT: You're not here on diversity?

MR. TANNER: I'm sorry.

THE COURT: You're not here on diversity?

MR. TANNER: Yes, we are

THE COURT: You're seeking jurisdiction because of diversity, right?

MR. TANNER: That's correct, sir.

THE COURT: You're saying a resident of this state is suing a resident of another state?

MR. TANNER: What we're saying, your Honor, is –

THE COURT: But, your man isn't a resident of this [p. 12] state, is he? Jordan, is he? He's from Tennessee.

MR. BERNS: That's correct.

THE COURT: Can somebody from Tennessee file an action here saying there's diversity?

MR. BERNS: I do not believe so.

THE COURT: What is the likelihood of success on the merits? Tell me.

MR. TANNER: Your Honor, we feel the likelihood of success on the merits is very good; particularly, with respect to the diversity action as to –

THE COURT: Let's assume that we're here because they're citizens of two different states. Although, you admit that he is not a – he's not domiciled in Ohio; he's domiciled in Tennessee, Nashville, Tennessee.

Now, you're telling me I have diversity jurisdiction and, Mark, I think, and Jordan are going to question that, but forget the diversity.

How do I have in persona jurisdiction? How do I have venue? He's got to be a citizen of this state for me to have venue. And where do you come from? Tell me.

MR. TANNER: The action that we were primarily claiming is the attack on the state court judgment that was entered into Ohio. And by virtue of that there –

THE COURT: Wait.

To attack anything – the way to attack anything is do [p. 13] you have an adequate remedy at law? You have a

hardship. Undoubtedly, all his funds were removed from him, and perilously now, they're headed for his wife. And you want to put a stop to this.

When a court in Arizona makes a decision – and I don't know exactly what that – I think everything is in default almost. I mean he never responded to anything, either a hearing on the sanctions.

The appropriate remedy is to file a motion for reconsideration and appear before – off the record.

(Discussion off the record.)

THE COURT: You haven't explained to me just how his wife and her lawyers are state actors against whom an action can be filed under 1983 abridgement of constitutional right under color of state law. And the state law that was abridged, if any, was Arizona.

MR. TANNER: The state action on the part of the attorney/defendants stems from their being officers of the court. The Court itself –

THE COURT: Sir, I'm telling you I'm the Judge and you're not. There's no state action for which attorneys, who are licensed by the state to practice law, can be brought under an abridgement for constitutional right under 1983. Now, that's the law, and that's the same as to his wife.

[p. 14] Anyway, as to the wife, we have a decision by the District Court out there to which I look and say that's my brother court, and I accept that decision and that was decided with prejudice; the other was dismissed voluntarily without prejudice.

You're here now, and I'm dismissing it with prejudice; one reason of which is I don't have those people before me on the basis of in persona. You can't win that action.

Now, so far as that the state decree is here, the Ohio State decree issuing a divorce, we have an Arizona court, which decided that action out there. We have a right to appeal, we feel, a civil case. We have a right to delayed appeal.

This request for temporary restraining order is denied. The preliminary injunction hearing will not be set down. The whole case is dismissed with prejudice for the reason that this Court does not have in persona jurisdiction. There's a question as to venue and the allegations made are not before this Court.

Anything further?

MR. COHN: Nothing.

THE COURT: Anything further?

MR. RABB: No.

MR. BERNS: Nothing, your Honor.

THE COURT: So ordered.

[p. 15] MR. MAXTON: Thank you, your Honor.

THE COURT: Call your client. It's being dismissed.

MR. TANNER: Note Plaintiff's exception, your Honor.

THE COURT: What?

MR. TANNER: Note Plaintiff's exception.

THE COURT: Note Reginald's exception because he can't make it.

All right.

MR. TANNER: Thank you, your Honor.

(Proceedings adjourned.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Shirle M. Perkins
Shirle M. Perkins, RPR-CM
Official Court Reporter

APPENDIX 11

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ROBERT S. CATZ, Plaintiff, vs. SUSAN R. CHALKER, Defendant.	No. CIV 94-879-TUC ACM **ORDER** (Filed Jun. 9, 1995)

On April 13, 1995, Plaintiff Robert S. Catz, filed a Motion for Voluntary Dismissal Without Prejudice. On May 26, 1995, Defendant Susan Chalker filed a Response to the Plaintiff's Motion for Voluntary Dismissal.

For the reasons set forth in the Defendant's Response.

IT IS ORDERED that this case shall be DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that the hearing set for June 12, 1995 is VACATED.

Dated this 8th day of June, 1995.

/s/ Alfredo C. Marquez
ALFREDO C. MARQUEZ
Senior Judge

Copies mailed this date to:

Mr. Philip Matthew Stinson, Sr.
P.O. Box 809
Valley Forge, PA 19482-0809

KARP & WEISS, P.C.
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LK:lp
PCC NO. 30244

ATTORNEY FOR:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ROBERT S. CATZ, Plaintiff, vs. SUSAN R. CHALKER, Defendant.	NO. CV94-879 TUC ACM DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL

Defendant, Susan Chalker, by and through her attorneys undersigned, hereby responds to Plaintiff's Motion for Voluntary Dismissal and asks this court to dismiss Plaintiff's action *with* prejudice. This request is supported

by the accompanying Memorandum of Points and Authorities.

Respectfully submitted this 26th day of May, 1995.

KARP & WEISS, P.C.
AND
BUTLER & STEIN, P.C.

/s/ Leonard Karp
Leonard Karp
Attorneys for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff requests this Court issue an order of voluntary dismissal, without prejudice, because he improperly anticipated that the Defendant would raise a federal question in her state court pleadings thus enabling Plaintiff to bring an action against her pursuant to 42 U.S.C. § 1983. Defendant agrees that Plaintiff's lawsuit should be dismissed; however, the dismissal should be with prejudice.

Rule 41(a)(2), Federal Rules of Civil Procedure, provides that this court may dismiss Plaintiff's action upon such terms and conditions as it deems proper. Rule 1, *supra,* as amended, requires federal courts to construe and administer the rules to secure the just, speedy and inexpensive determination of every action. Rule 41, applied in conjunction with Rule 1, requires this court to dismiss Plaintiff's lawsuit with prejudice in order to halt the Plaintiff's abusive use of the federal legal system to intimidate the Defendant, and to avoid further frivolous filings by Plaintiff.

Plaintiff's conduct illustrates that he is using both federal and state court processes to abuse and harass the Defendant rather than to secure the just determination of any valid legal dispute. He has filed numerous lawsuits and pleadings in this court, the Arizona and Ohio state courts, and most recently the Ninth Circuit Court of Appeals. Plaintiff has made himself unavailable, thereby precluding Defendant's attempt at discovery in the Arizona state court action. He has changed his address several times over the course of six months, requiring Defendant to mail various pleadings to his numerous

addresses in several states, and he has never appeared personally, telephonically, or through counsel in any of these court hearings.

As this court is well aware, Plaintiff has filed numerous pleadings with this court not limited to this § 1983 complaint. He has also filed a companion § 1983 lawsuit against undersigned counsel; a motion to dismiss or to transfer the state divorce action to the Ohio District Court; two removal petitions of the Arizona divorce action; and an appeal to the Ninth Circuit of this Court's decision remanding the state divorce action back to the Superior Court. All of Plaintiff's pleadings, excluding the companion lawsuit against Defendant's counsel, required responsive pleadings and, finally, resulted in an order from this Court directing the clerk of the court to not accept further pleadings in case number CV-94-872-TUC-ACM from Plaintiff without the Court's express permission.

This § 1983 lawsuit, is further evidence of Plaintiff's attempts to harass and intimidate the Defendant, requiring her to deplete her funds to hire counsel to defend her. In *Von Poppenheim v. Portland Boxing and Wrestling Commission,* 442 F.2d 1047 (9th Cir. 1971), the court, in dismissing a lawsuit pursuant to Rule 42(b), stated:

> Somewhere along the line, the rights of the defendant to be free from costly and harassing litigation must be considered. So too must the time and energies of our courts and the rights of would-be litigants awaiting their turns to have other matters resolved.

Id. at 1054. Here, Plaintiff has reached the end of the line. His overzealous and aggressive litigation tactics need to

be terminated by order of this court. His basis for the original filing is facially frivolous. He filed in anticipation that the Defendant would raise a federal claim in the state court pleadings. The Plaintiff is a lawyer who knows, inter alia, that one does not ethically file a lawsuit in anticipation that he will have a cause of action. One files a lawsuit if he has a cause of action. Moreover, Plaintiff's filing of the instant complaint is the exact type of filing prohibited by Rule 11 and shall subject him to monetary sanctions, including the costs and attorneys fees Defendant exhausted in defending herself in this meritless action. (A motion for sanctions under Rule 11 shall be filed under separate cover).

CONCLUSION

For the foregoing reasons, Plaintiff's utter disregard for the law must be halted and his complaint must be dismissed with prejudice.

APPENDIX 12

IN THE COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
CUYAHOGA COUNTY, OHIO

ROBERT S. CATZ, *Plaintiff,* vs. SUSAN R. CATZ, *aka* SUSAN R. CHALKER, *Defendant.*	CASE NUMBER: D 191073 JUDGE STANLEY M. FISHER

PLAINTIFF'S APPLICATION FOR SUPPLEMENTAL RELIEF PURSUANT TO OHIO REV. CODE § 2721.09 TO ENFORCE AGAINST DEFENDANT A JUDGMENT OF THIS COURT ENTERED ON APRIL 10, 1989

Plaintiff Robert S. Catz hereby makes application for supplemental relief pursuant to Ohio Rev. Code § 2721.09 in the form of a declaratory judgment and permanent injunction pursuant to Ohio R. Civ. P. 65 enjoining defendant Catz *aka* Chalker from relitigating in this or any other fora the issues and claims previously presented to and adjudicated by this Court in its final judgment entered on April 10, 1989. In support of this application, plaintiff Catz avers as follows:

1. The parties were married on April 13, 1980, in Washington, D.C.

2. On April 10, 1989, the Cuyahoga County Court of Common Pleas, issued a final judgment in divorce, and further provided as follows: (1) neither party is entitled

to alimony; (2) that plaintiff Catz shall regain possession of and have sole and exclusive rights of his personal property located in the State of Ohio; (3) that defendant Catz *aka* Chalker shall retain possession of and have sole and exclusive rights of her personal property located in the State of Florida.

3. On November 4, 1994, defendant Catz *aka* Chalker filed a dissolution action in the Pima County Superior Court, Tucson, Arizona, collaterally attacking the final judgment of this Court. *Chalker v. Catz*, No. D-103065.

4. On March 14, 1995, the Pima County Superior Court, Tucson, Arizona, issued a final Decree of Dissolution by default in favor of defendant Catz *aka* Chalker, and declined on grounds of fraud to give this Court's prior judgment full faith and credit under Article IV, Section 1, United States Constitution. Said Arizona decree purports to award defendant Catz *aka* Chalker alimony and transfers property rightfully belonging to plaintiff Catz that this Court awarded him on April 10, 1989.

5. At no time since the April 10, 1989 decree of this Court granting a divorce did the parties remarry.

6. The final judgment entered by the Arizona court in *Chalker v. Catz* is invalid and unenforceable and not entitled to be given the full faith and credit under Article IV, Section 1, United States Constitution, by this or any other court.

WHEREFORE, plaintiff prays that this Court issue a declaratory judgment pursuant to Ohio Rev. Code

§ 2721.09 finding that: (1) this Court has continuing subject matter jurisdiction in this case to enforce its prior decree and judgment pursuant to Ohio Rev. Code § 3105.01; (2) when said judgment was entered on April 10, 1989, this Court had acquired *in personam* jurisdiction over the defendant under *International Shoe v. Washington,* 326 U.S. 310 (1945); *Pasqualne v. Pasqualne,* 406 N.E.2d 1121, 1124-25 (Ohio 1980); *Hofsteder v. Kennedy,* 590 N.E.2d 793 (Ohio App. 1990); (3) when said judgment was entered on April 10, 1989, this Court had acquired *in rem* jurisdiction over all property belonging to the plaintiff in the State of Ohio under *Schaffer v. Heitner,* 433 U.S. 186 (1977); (4) service of process on the defendant Catz *aka* Chalker was effectuated pursuant to Ohio R. Civ. P. 4.3(A)(8) and that said method of service satisfies due process under *Mullane v. Central Hanover Bank and Trust Co.,* 339 U.S. 306 (1950); *United Home Federal v. Rhinehart,* 601 N.E.2d 138 (Ohio App. 1991); (5) defendant Catz *aka* Chalker's claim of fraud committed by plaintiff Catz before this tribunal, and possibly by others is denied, and is nonetheless barred by laches, claim/issue preclusion, estoppel, waiver, and any fraud claim must have been asserted by defendant Catz *aka* Chalker within one year of its discovery and brought before this Court under Ohio R. Civ. P. 60(b). *See* Karp & Karp, DOMESTIC TORTS (1989) §§ 1.36-1.37; (6) under Article IV, Section 1, United States Constitution, as interpreted by the Arizona courts and others, defendant Catz *aka* Chalker may only attack the Ohio judgment for fraud on jurisdictional facts, stated with particularity, and only upon a finding of clear and convincing evidence. None of these elements form the

basis of the Arizona court's arbitrary and capricious findings of fact and conclusions of law, nor does the evidentiary record support such findings, and is therefore clearly erroneous. Accordingly, plaintiff Catz is entitled under Ohio R. Civ. P. 65 to a final injunction permanently enjoining the defendant Catz *aka* Chalkar from bringing any further frivolous, vexatious, harassing litigation regarding issues and claims presented and adjudicated by this Court's April 10, 1989 final judgment and arising under these supplemental proceedings, in this or any other fora.

Respectfully submitted,

By: /s/_____
Gerald R. Walton & Associates Co., L.P.A.
(Bar No. 0003914)

2800 Euclid Avenue, Suite 500
Cleveland, Ohio 44115
(216) 621-1230

Attorney for Plaintiff

APPENDIX 13

IN THE SUPREME COURT OF ARIZONA

ROBERT S. CATZ, ESQUIRE Petitioner, vs. THE HONORABLE LEONARD I. KARP, THE HONORABLE MICHAEL ALFRED, THE HONORABLE JOSEPH MCDONALD, Judges of the Superior Court in and for the County of Pima, THE HONORABLE JAMES N. CORBETT, Clerk of the Superior Court in and for the County of Pima, and, SUSAN R. CHALKER, ESQUIRE real party in interest, Respondents.	)	No. ___-SA

VERIFIED PETITION FOR SPECIAL ACTION

ROBERT S. CATZ
1402 17th Ave. South #B
Nashville, TN 37212
(615) 780-3594

Petitioner In Propria Persona

* * *

1871, 42 U.S.C. § 1983 as this action alleges multiple unconstitutional acts committed under color of law. **New Times Inc. v. Arizona Board of Regents,** 519 P.2d 169, 176 (Ariz.1974). See, generally, S. Steinglass, SECTION 1983 LITIGATION IN STATE COURTS (Shepherd/McGraw Hill 1987). See also, Steinglass, The Emerging State Court Section 1983 Action: A Procedural Review, 38 U.MIAMI L.REV.381, 383-84 n.10 (1984).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

4. Whether judicial respondents' standing orders entered on November 4, 1994, December 1, 1994, March 2, 1995, and March 14, 1995 are arbitrary, capricious, and an abuse of discretion and therefore contrary to required law.

5. Whether the respondent judicial officers have proceeded in excess of jurisdiction and without legal authority.

PARTIES

6. Petitioner Robert S. Catz, Esquire, is the respondent below, and a member in good standing of the bar of the Supreme Court of Ohio and appears in these proceedings **in propria persona**. From 1977 to 1989 petitioner was domiciled in Cleveland, Ohio where he served as a professor of law with tenure as a member of the faculty of law of the College of Law, Cleveland State University, Cleveland, Ohio and taught civil procedure,

APPENDIX 14

SUPREME COURT OF ARIZONA

ROBERT S. CATZ, Petitioner, vs. THE HONORABLE LEONARD I. KARP, THE HONORABLE MICHAEL ALFRED, THE HONORABLE JOSEPH MCDONALD, JUDGES OF THE SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Pima, JAMES N. CORBETT, CLERK OF THE SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Pima, and, SUSAN R. CHALKER, ESQUIRE real party in interest, Respondents.	)	Supreme Court No. M-95-0026 **ORDER** (Filed Jun. 30, 1995)

The duty justice has considered the verified petition for special action, the documentary appendix in support of special action, application for interlocutory order staying all further proceedings below, and other motions. The duty justice has been unsuccessful in locating petitioner by telephone or to have a phone conference with opposing counsel.

The court declines to entertain the petition. The court appeals appears to have jurisdiction to entertain the petition for special action or as an appeal. A.R.S. §12-120.21. Therefore,

IT IS ORDERED transferring this cause to the Court of Appeals, Division Two. A.R.S. §12-120.22(B). No action is taken on the motion to waive fees.

DATED this 30th day of June, 1995.

/s/ Robert J. Corcoran
ROBERT J. CORCORAN
Duty Justice

TO:

Robert S. Catz, Petitioner
Hon. Leonard I. Karp, Pima County Superior Court
Hon. Michael Alfred, Pima County Superior Court
Hon. Joseph McDonald, Pima County Superior Court
James Corbett, Clerk, Pima County Superior Court
Carl A. Piccarreta, Esq.
Joyce A. Goldsmith, Clerk, Court of Appeals Division Two, Tucson

sb

APPENDIX 15

Supreme Court of Arizona

ROBERT S. CATZ, ESQUIRE Petitioner, vs. THE HONORABLE L. I. KARP, THE HONORABLE M. ALFRED, THE HONORABLE J. MCDONALD, JUDGES OF THE SUPERIOR COURT of Pima County, and SUSAN R. CHALKER, ESQUIRE real party in interest, Respondents.	*	Supreme Court No. M-95-0026

EMERGENCY MOTION FOR REHEARING BY THE FULL COURT EN BANC

Petitioner, Robert S. Catz, Esquire hereby moves the full court en banc to reconsider the order entered by Justice Corcoran on June 30, 1995 in which he declined to exercise jurisdiction over the petition for special action filed on June 29, 1995. (A copy of the order is attached hereto) As grounds for reconsideration petitioner relies on Rule 7(b) of the Rules for Special Action as this case is properly before this Court and not the court of appeals in the first instance and states as follows:

1. Whether this Court declines or accepts to hear a petition for special action given the omnibus allegations of aggregious misconduct by three judicial officers of a lower court and

instead transferring this case to the court of appeals in the first instance is a matter to be properly considered by each individual justice and not by a single justice sitting to hear procedural motions as a duty justice.

2. This is precisely and uniquely the kind of case that warrants the immediate intervention of a court of last resort to exercise its supervisory powers over lower court judges that have committed clear and numerous violations of the Code of Judicial Conduct and have acquiesced to violations of the Code of Professional Conduct by respondent Chalkers' counsel including the fraudulent withholding of evidence, suborning perjury, and holding private and clandestine conferences with respondent judges off the record among others. The constitutional and procedural irregularities that have occurred below cannot be tolerated by this Court and requires the immediate intervention by this Court to insure that basic and fundamental rights are protected and to safeguard that the law of the land is faithfully executed by judicial officers sworn to uphold the U.S. and Arizona Constitutions. This Court has historically exercised its supervisory powers in special actions in matters concerning the efficient and just administration of the Arizona judicial system, a role properly exercised by the Supreme Court and not a court of appeals, whenever the needs [sic] arises as this case clearly demonstrates, for the prompt and final resolution of far reaching legal questions of state-wide import to avoid unnecessary and protracted litigation which will continue unabated in Arizona and in the Ohio Courts unless this Court disciplines the judges below, and to preserve collateral questions of

law that might otherwise evade judicial review thereby promoting statewide judicial efficiency as this case clearly qualifies as the kind of special action more properly before this court given the unique posture of this case. See, **Arizona's Special Action Practice,** 1983 ARIZONA ST.L.J. 535, 553-54.

3. The serious allegations of judicial and professional misconduct by respondents is not a matter that should be properly heard and considered by Pima County appellate court judges who live and reside in that community when the allegations of misconduct that have occurred in a locale where the violations as so pervasive and reflect a local culture and bias against an out of state litigant who is not a senior member of the Pima County Bar and retains professional and personal relationships with jurists of Pima County that should be remedied by this Court and not a court with relationships with judges of the Superior Court of Pima County.

4. The serious, constitutional violations which are clearly documented in the record below as contained in the documentary appendix require this Court to intervene and review a jurisdictional dispute and conflict between the Arizona and Ohio Courts regarding which of two judgments is entitled to full faith and credit under Article IV § 1 and 28 U.S.C. § 1738, a unique role for a court of last resort regarding the comity owed to the judgments of a sovereign sister state and the applicable legal standard that should be applied under 28 U.S.C. § 1738. This Court has not spoken on this issue of statewide applicability since it rendered a decision in **Stephens v. Thomasson,** 160 P.2d 238 (Ariz.

1945), nor has it ever interpreted the reach of 28 U.S.C. § 1738 under the Supremacy Clause of the U.S. Constitution which was patently disregarded by the respondents below.

5. The final default judgment enter [sic] by the court below on March 14, 1995 finds that petitioner a member of the bar of the Supreme Court of Ohio committed fraud upon an Ohio court in 1988 and therefore the Ohio judgment was not entitled to full faith and credit when no such evidence exists nor was it established below at a default evidentiary hearing. Unless immediate intervention and relief is granted by this Court petitioner will be required as a member in good standing of the bar of three separate jurisdictions since 1970, to report the Arizona state court finding of "fraud" to the Supreme Court of Ohio, the District of Columbia Court of Appeals and the Supreme Court of Nebraska which ought to be a concern of this Court, and would be wholly unnecessary and will simply cause further waste of judicial resources by other additional jurisdictions to determine whether petitioner should be disciplined or disbarred for the commission of "fraud" by an officer of the court, if the full Court declines to promptly exercise its plenary and supervisory powers over respondents through their acts of misconduct as clearly present in the record below rathering than transferring this case to court of appeals which creates a totally unnecessary and additional sub-level of review thereby prolonging a proceeding that this Court could easily and finally adjudicate now given the unique procedural posture of this special action involving issues that a court of last resort should and must consider without further delay.

WHEREFORE, petitioner prays that this Court reconsider and vacate the order entered by the duty justice and exercise clear jurisdiction in this case forthwith.

Respectfully submitted,

/s/ Robert S. Catz.
ROBERT S. CATZ
1402 17th Ave. South #B
Nashvile [sic], TN 37212
(615) 780-3594

Petitioner In Propria Persona

SUPREME COURT OF ARIZONA

ROBERT S. CATZ, Petitioner, vs. THE HONORABLE LEONARD I. KARP, THE HONORABLE MICHAEL ALFRED, THE HONORABLE JOSEPH MCDONALD, JUDGES OF THE SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Pima, JAMES N. CORBETT, CLERK OF THE SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Pima, and SUSAN R. CHALKER, ESQUIRE, real party in interest, Respondents.	Supreme Court No. M-95-0026 **ORDER** (Filed June 30, 1995)

The duty justice has considered the verified petition for special action, the documentary appendix in support of special action, application for interlocutory order staying all further proceedings below, and other motions. The duty justice has been unsuccessful in locating petitioner by telephone or to have a phone conference with opposing counsel.

The court declines to entertain the petition. The court of appeals appears to have jurisdiction to entertain the

petition for special action or as an appeal. A.R.S. §12-120.21. Therefore,

IT IS ORDERED transferring this cause to the Court of Appeals, Division Two. A.R.S. §12-120.22(B). No action is taken on the motion to waive fees.

DATED this 30th day of June, 1995.

/s/ Robert J. Corcoran
ROBERT J. CORCORAN
Duty Justice

TO:

Robert S. Catz, Petitioner
Hon. Leonard I. Karp, Pima County Superior Court
Hon. Michael Alfred, Pima County Superior Court
Hon. Joseph McDonald, Pima County Superior Court
James Corbett, Clerk, Pima County Superior Court
Carl A. Piccarreta, Esq.
Joyce A. Goldsmith, Clerk, Court of Appeals Division Two, Tucson

sb

APPENDIX 16

SUPREME COURT OF ARIZONA

ROBERT S. CATZ, Petitioner, vs. THE HONORABLE LEONARD I. KARP, THE HONORABLE MICHAEL ALFRED, THE HONORABLE JOSEPH MCDONALD, JUDGES OF THE SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Pima, JAMES N. CORBETT, CLERK OF THE SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Pima, and, SUSAN R. CHALKER, ESQUIRE real party in interest, Respondents.	Supreme Court No. M-95-0026 **ORDER** (Filed Jul. 14, 1995)

Upon reading the Motion for Rehearing by the Full Court En Banc,

And it appearing that there are no grounds to reconsider the order of this Court in this cause entered on June 30, 1995,

IT IS HEREBY ORDERED that the motion is DENIED.

DATED this 14 day of July, 1995.

/s/ Frederick J. Martone
FREDERICK J. MARTONE
Justice

TO:

Robert S. Catz, Petitioner
Hon. Leonard I. Karp, Pima County Superior Court
Hon. Michael Alfred, Pima County Superior Court
Hon. Joseph McDonald, Pima County Superior Court
James Corbett, Clerk, Pima County Superior Court
Carl A. Piccarreta, Esq.
Joyce A. Goldsmith, Clerk, Court of Appeals Division Two, Tucson

sb

cc: Herb P. 7/20/95

APPENDIX 17

ROBERT S. CATZ, ESQUIRE
1402-17th Avenue South #B
Nashville, Tennessee 37212
(615) 780-3594

July 13, 1995

Ms. Joyce A. Goldsmith, Clerk
Court of Appeals, Division Two
State Office Complex
400 West Congress
Tucson, Arizona 85701-1374

re: Supreme Court No. M-95-0026
Catz v. Karp et al

Dear Ms. Goldsmith:

As per Mr. Dessaint's direction and our telephone conversation of yesterday I have enclosed a copy of my motion for rehearing filed in the above-matter on July 6, 1995 asking the full Court to reconsider Justice Corcoran's order transferring my Petition for Special Action to Division Two. Since the Petition for Special Action is still pending in the Arizona Supreme Court and the transfer order is not yet final I ask you that you not file the pleadings sent to you by Mr. Dessaint's office until the Supreme Court's mandate issues.

I should also inform you that should the Supreme Court of Arizona decline by final order to exercise discretionary review on the Petition for Special Action it is my intention to file a petition for writ of certiorari to the Supreme Court of the United States to review claims arising under the full faith and credit clause and the due process clause and seek a stay of the final judgment of the Pima County

Superior Court entered on March 14, 1995 from Associate Justice O'Connor sitting as Circuit Justice for the Ninth Circuit.

Given the unreliability of the U.S. mails I ask that your office confirm receipt of this letter.

I look forward to hearing from you.

Cordially,

/s/ Robert S. Catz
ROBERT S. CATZ

cc: James Leonard Karp; Judge Michael Alfred; Judge Joseph McDonald; James Corbett, Clerk; Annette Everlove, Esquire for Susan R. Chalker, Esquire real party of interest; Noel K. Dessaint, Clerk; Carl Piccaretta, Esquire.

Enclosure

APPENDIX 18

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT S. CATZ,
1402 17th Avenue South #B
Nashville, TN 37212,

PLAINTIFF,

vs.

SUSAN R. CHALKER,
6374 Vuelta Tajo
Tucson, AZ 85718

FIDELITY INVESTMENTS,
164 North Northern Avenue
Boston, MA 02210

WATERHOUSE SECURITIES,
100 Wall Street
New York, NY 10005

TEACHERS INSURANCE
ANNUITY
ASSOCIATION/COLLEGE
RETIREMENT EQUITY FUND,
730 Third Avenue
New York, NY 10017

OHIO STATE TEACHERS
RETIREMENT SYSTEM
275 Broad Street
Columbus, OH 43215

DEFENDANTS.

CA No. 1:95CV 1652

JUDGE MANOS

MAG. JUDGE HEMANN

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

I. INTRODUCTORY STATEMENT

1. This action arises under 28 U.S.C. §1738 seeking final injunctive and declaratory relief as to which of two final and conflicting state court judgments is entitled to full faith and credit under Article IV §1 of the United States Constitution.

II. JURISDICTION

2. This Court has subject matter jurisdiction under 28 U.S.C. §1332 as there is complete diversity of citizenship between the parties and the amount in controversy exceeds $50,000 exclusive of interests and costs.

III. PARTIES

3. The plaintiff Robert S. Catz is an adult resident of the State of Tennessee.

4. The defendant Susan R. Chalker is an adult resident of the State of Arizona.

5. The defendant Fidelity Investments of Massachusetts is a financial services company authorized to sell securities and other investment instruments in the State of Ohio.

6. The defendant Waterhouse Securities of New York is a financial services company authorized to sell securities and other investment instruments in the State of Ohio.

7. The defendant Teachers Insurance Annuity Association/College Retirement Equity Fund of New York is a

financial services company authorized to sell securities and other investment instruments in the State of Ohio.

8. The defendant Ohio State Teachers Retirement System of Columbus was created by the Ohio legislature to provide retirement and other related benefits and services to Ohio's public school and state university employees.

IV. FACTUAL ALLEGATIONS

9. On April 13, 1980 the plaintiff Robert S. Catz and defendant Susan R. Chalker were married in Washington, D.C.

10. On April 10, 1989 the plaintiff Robert S. Catz and defendant Susan R. Chalker were divorced by final decree entered by the Cuyahoga County Court of Common Pleas in *Catz v. Catz*, No. D 191073 a copy of said final judgment is attached hereto.

11. On November 4, 1994 defendant Chalker filed a petition for dissolution of marriage in the Pima County Superior Court, Tucson, Arizona in *Chalker v. Catz*, No. D103065 collaterally attacking the validity of 1989 Ohio judgment.

12. On March 14, 1995 the Pima County Superior Court entered a final judgment in Chalker v. Catz granting defendant Chalker a dissolution of marriage by default judgment on grounds that the 1989 Ohio judgment was not entitled to full faith and credit under Article IV §1 of the United States Constitution as it was procured by fraud and ordered among other things the transfer of property held in the name of plaintiff Robert S. Catz on

account with defendants Fidelity Investments, Waterhouse Securities, Teachers Insurance Annuity Association/College Retirement Equity Fund and the Ohio State Teachers Retirement System to defendant Chalker a copy of which is attached hereto.

V. CLAIMS FOR RELIEF

13. The Arizona state court judgment was entered in violation of 28 U.S.C. §1738 and Article IV §1 of the United States Constitution and is therefore invalid.

14. The Arizona state court judgment was entered in violation of the due process clause of the fourteenth amendment of the United States Constitution as plaintiff Catz was denied a full and fair opportunity to present his claims before the Arizona state court in *Chalker v. Catz* and is therefore invalid.

VI. PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that the Court grant the following relief:

1. Issue a declaratory judgment that the Arizona state court judgment is invalid under 28 U.S.C. §1738, Article IV §1 and the fourteenth amendment of the United States Constitution.

2. Issue a permanent injunction enjoining defendant Chalker from initiating any further litigation collaterally attacking the Ohio judgment on grounds that said judgment is constitutionality [sic] valid and therefore entitled to complete and full preclusive effect under Ohio law as

to all issues and claims adjudicated by the Ohio court in 1989.

Respectfully submitted,

/s/ Robert S. Catz
ROBERT S. CATZ
1402 17th Avenue South # B
Nashville, Tennessee 37212
(615) 780-3594

PLAINTIFF APPEARING PRO SE

APPENDIX 19

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT S. CATZ, ESQ.
1402 17TH AVE So. # B
Nashville, TN 37212,

Plaintiff,

vs.

SUSAN R. CHALKER, ESQ.
6374 Vuelta Tajo
Tucson, AZ 85718

ANNETTE EVERLOVE, ESQ.
BUTLER & STEIN, P.C.
110 Church Ave #9300
Tucson, Az 85701,

LEONARD I. KARP, ESQ.
KARP, HEURLIN & WEISS, P.C.
33 No. Stone Ave # 1800
Tucson, Az 85701,

FIDELITY INVESTMENTS, INC.
164 N. Northern Ave
Boston, MA 02210,

WATERHOUSE SECURITIES
100 Wall Street
New York, NY 10005

TIAA/CREF
730 Third Avenue
New York, NY 10017,

Defendants.

NO. 1:95 cv 1652

JUDGE MANOS
(Mag. Judge
Hemann)

PLAINTIFF'S FIRST AMENDED COMPLAINT

Now comes the plaintiff, Robert S. Catz and complains as follows:

I. INTRODUCTORY STATEMENT

1. This action arises under the due process clause of the fourteenth amendment of the U.S. Constitution and 42 U.S.C. §§ 1983, 1985 seeking permanent injunctive relief enforcing a final Ohio state court judgment entered on April 10, 1989, and a declaratory judgment pursuant to 28 U.S.C. § 2201 seeking a judicial determination from this Court, which of two final and conflicting state court judgments is entitled to full faith and credit under Article IV, § 1 of the U.S. Constitution and 28 U.S.C. § 1738. Plaintiff also seeks an award of damages for violation of rights secured under the due process clause of the fourteenth amendment of the U.S. Constitution, for violations of the Electronic Communications Act of 1986, 18 U.S.C. § 2511, for common law fraud and deceit, for tortious interference with plaintiff's professional license and for intentional infliction of emotional distress under Ohio law.

II. JURISDICTION

2. This Court has subject matter jurisdiction pursuant to U.S. Constitution, under 28 U.S.C. § 1332 as there is complete diversity of citizenship between the parties and the amount in controversy exceeds $50,000 exclusive of interests and costs, and under 28 U.S.C. § 1343(a)(3)(4) for

violations of plaintiff's civil rights committed under color of law.

3. This Court has personal jurisdiction over the defendants pursuant to O.R.C. § 2307.382(A)(2)&(6), Ohio's long-arm statute.

III. THE PARTIES

4. The plaintiff, Robert S. Catz is an adult resident of the State of Tennessee and an attorney admitted to the bar of Ohio.

5. The defendant, Susan R. Chalker is an adult resident of the State of Arizona and an attorney admitted to the bar of Florida.

6. The defendant, Leonard I. Karp is an adult resident of the State of Arizona and an attorney admitted to the bar of Arizona.

7. The defendant, Annette Everlove is an adult resident of the State of Arizona and an attorney admitted to the bar of Arizona.

8. The defendant, Karp, Heurlin & Weiss, P.C., is a professional association incorporated under the laws of the State of Arizona for the purposes of providing legal services and at all times alleged herein relied on the services of attorney-defendant Karp.

9. The defendant Butler & Stein, P.C., is a professional association incorporated under the laws of the State of Arizona for the purposes of providing legal services and at all times alleged herein relied on the services of attorney-defendant Everlove.

10. The defendant, Fidelity Investments of the State of Massachusetts is a financial services company authorized to to [sic] sell securities in the State of Ohio.

11. The defendant, Waterhouse Securities of the State of New York is a financial services company authorized to sell securities in the State of Ohio.

12. The defendant, Teachers Insurance Annuity Association/College Retirement Equity Fund of the State of New York is a financial services company authorized to sell securities in the State of Ohio.

IV. FACTUAL ALLEGATIONS

13. On April 13, 1980, the plaintiff Robert S. Catz and defendant Susan R. Chalker were married in Washington, D.C. The parties have a son, Aaron, age 14.

14. On April 10, 1989, the plaintiff Robert S. Catz and defendant Susan R. Chalker were divorced by final decree entered by the Cuyahoga County Court of Common Pleas, Cleveland, Ohio, in *Catz v. Catz*, No. D191073. *See* Exhibit "A" attached hereto (Ohio divorce decree).

15. On November 4, 1994, defendant Chalker filed a petition for dissolution of marriage in the Pima County Superior Court, Tucson, Arizona in *Chalker v. Catz*, No. D103065 collaterally attacking the validity of the Ohio judgment.

16. On October 20, 1994, October 27, 1994, November 7, 1994, November 8, 1994 and November 14, 1994 defendant Chalker acting in concert with defendants Everlove, Karp and their respective law firms together conspired in the unlawful electronic interception and surreptitious

forced entry by aural acquisition of plaintiff's personal sole bank account operating in interstate commerce.

17. On March 14, 1995, the Pima County Superior Court entered a final decree and judgment in *Chalker v. Catz* granting defendant Chalker a dissolution of marriage by default and invalidated the 1989 Ohio state court judgment upon a finding by the Arizona court that it was not entitled to full faith and credit under Article IV, § 1 of the U.S. Constitution as plaintiff allegedly procured said final decree of divorce by committing fraud upon the Cuyahoga County Court of Common Pleas while an officer of that court and admitted to practice before the bar of the Supreme Court of Ohio. The Arizona decree further ordered *inter alia* the transfer of all his separate property awarded to him by the Ohio court and in the custody of defendant financial institutions named herein. *See* Exhibit "B" attached hereto (Arizona dissolution decree).

18. The manner in which the Arizona state court proceeding were [sic] conducted, resulting in the coerced and involuntary entry of the final decree of dissolution by default deprived the plaintiff of a full and fair opportunity to be heard on all claims adjudicated on March 14, 1995 as well as denying the plaintiff to opportunity to present his own claims and defenses before that tribunal; that said decree was procured by defendant Chalker's knowing and intentional use of false testimony and affidavits; and through the fraudulent withholding of relevant and material documentary evidence from the Arizona court by her counsel, defendants Karp and Everlove acting in concert with defendant Chalker and their respective professional corporation/defendants and

other yet unnamed defendants with the specific intent to deceive, suborn perjury and obstruct by the unlawful invalidation of the 1989 Ohio judgment. If said material documentary evidence had not been concealed but forthrightly presented to the Arizona tribunal it would have resulted in the summary dismissal of the dissolution proceedings.

19. On July 28, 1995 plaintiff attended a chambers conference before the presiding judge of the Cuyahoga Court of Common Pleas in *Catz v. Catz,* and pursuant to his professional obligation as an officer of that court, reported the Arizona state court finding that plaintiff had committed fraud upon the Ohio court in securing the 1989 decree of divorce. At that conference, plaintiff requested and the presiding judge agreed to refer the Arizona court fraud finding to the Disciplinary Committee of the Cuyahoga Bar Association for investigation of misconduct under DR 1-103(A) (reporting misconduct) of violations of DR 1-102(A)(3) (criminal act), DR 1-102(4)(A) (fraud), and DR 1-101(A)(5) (conduct prejudicial to the administration of justice) of the Ohio Supreme Court Code of Professional Responsibility.

V. CLAIMS FOR RELIEF

Count One:
Declaratory Judgment 28 U.S.C. § 2201
(Catz v. all defendants)

20. The plaintiff hereby incorporates all paragraphs herein as though fully set forth at length.

21. Plaintiff's claims are controversies between the parties over which this Court has jurisdiction.

22. The controversies are actual because there are conflicting state court judgments; one judgment awarding all of plaintiff's property located in the State of Ohio to him, and the other judgment all of plaintiff's property and assets to defendant Chalker.

23. The Arizona state court default judgment was entered in violation of the due process clause of the fourteenth amendment of the U.S. Constitution and is therefore invalid.

24. The Arizona state court default judgment was entered in violation of Article IV § 1 of the U.S. Constitution and is therefore invalid.

25. The Arizona state court default judgment was entered in violation of 28 U.S.C. § 1738 and is therefore invalid.

Count Two:
Violations of 42 U.S.C. §§ 1983 and 1985
(Catz v. Chalker, Karp, Everlove, Karp, Heurlin & Weiss, P.C. and Butler & Stein, P.C.)

26. The plaintiff hereby incorporates all paragraphs herein as though fully set forth at length.

27. Defendants Chalker, Karp, Everlove, Karp, Huerlin & Weiss, P.C. acting in concert with each and other yet unnamed persons were state actors under the color of Arizona law when they invoked the machinery of the Arizona courts to improperly seize plaintiff's property.

28. The fraudulent acts committed by defendants constitute violations of 42 U.S.C. § 1983 and a claim of conspiracy under 42 U.S.C. § 1985 to deprive the plaintiff of

federally protected rights under the due process clause of the fourteenth amendment of the U.S. Constitution.

Count Three:
The Electronic Communications Act of 1986 (18 U.S.C. §2511) (Catz v. Chalker, Karp, Everlove, Karp, Heurlin & Weiss, P.C. and Butler & Stein, P.C.)

29. The plaintiff hereby incorporates all paragraphs herein as though fully set forth at length.

30. The intentional electronic interception of plaintiff's personal and separate bank checking account by defendants constitute a violation of the civil damage remedy provisions of 18 U.S.C. § 2511

Count Four:
Fraud and Deceit
(Catz v. Chalker, Karp, Everlove, Karp, Heurlin & Weiss, P.C. and Butler & Stein, P.C.)

31. The plaintiff hereby incorporates all paragraphs herein as though fully set forth at length.

32. The intentional acts as alleged against the defendants constitutes a claim for common law fraud and deceit under Ohio law.

Count Five:
Tortious Interference with a Professional License
(Catz v. Chalker, Karp, Everlove, Karp, Heurlin & Weiss, P.C. and Butler & Stein, P.C.)

33. The plaintiff hereby incorporates all paragraphs herein as though fully set forth at length.

34. The intentional acts alleged against the defendants constitutes a claim for tortious interference with plaintiff's professional license to practice law in Ohio.

Count Six:
Intentional and Negligent Infliction of Emotional Distress
(Catz v. Chalker, Karp, Everlove, Karp, Heurlin & Weiss, P.C., Butler & Stein, P.C.)

35. The plaintiff hereby incorporates all paragraphs herein as though fully set forth at length.

36. The acts alleged against the defendants constitutes a claim for intentional and negligent infliction of emotional distress under Ohio law.

VI. PRAYER FOR RELIEF

WHEREFORE, plaintiff Robert S. Catz prays that the Court grant the following relief:

a. issue a declaratory judgment pursuant to 28 U.S.C. § 2201 that the Arizona state court judgment is invalid under 28 U.S.C. § 1738, Article IV, § 1 of the U.S. Constitution, and the due process clause of the fourteenth amendment of the U.S. Constitution, and issue corresponding permanent injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure permanently enjoining defendant Chalker from enforcing the Arizona state court judgment and direct that defendant financial institutions release plaintiff's assets forthwith;

b. award plaintiff actual, compensatory, consequential and punitive damages against defendants Chalker,

Karp, Everlove, Karp, Heurlin & Weiss, P.C., and Butler & Stein, P.C. in the amount of $10,000,000.

c. set this matter down for jury trial on the damage claims.

d. award plaintiff reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and 18 U.S.C. § 2511 and his costs, fees and expenses incurred herein.

Respectfully submitted,

Robert S. Catz
1402 – 17th Ave. So. #B
Nashville, TN 37212
(615) 780-3594

Reginald N. Maxton
James R. Tanner, Jr
1367 East 6th Street #400
Cleveland, OH 44114
(615) 696-0066

Philip M. Stinson, Sr.
BOCHETTO & LENTZ, P.C.
Centre Square, East Tower
1500 Market Street, # 1460
Philadelphia, PA 19102
(215) 735-3900

COUNSEL FOR PLAINTIFF

APPENDIX 20

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT S. CATZ, Plaintiff, v. SUSAN R. CHALKER, et al., Defendants.	)	CASE NO. 1:95CV1652 Judge John M. Manos MEMORANDUM OF OPINION

On July 27, 1995, Robert S. Catz, the plaintiff, filed the above captioned case. On September 26, 1995, he filed his first amended complaint against Susan R. Chalker, Annette Everlove, Leonard Karp, Karp, Heurlin & Weiss, P.C. ("KH&W"), Butler & Stein, P.C. ("B&S"), Fidelity Investments ("Fidelity"), Waterhouse Securities ("Waterhouse"), Teachers Insurance Annuity Association/College Retirement Equity Fund ("TIAA/CREF"), the defendants. Catz seeks a declaratory judgment regarding the validity of a judgment of divorce entered by a state court in Arizona. In addition, he alleges violations of his civil rights under 42 U.S.C. §§ 1983, 1985, violations of the Electronic Communications Act of 1986, 18 U.S.C. § 2511, and common law fraud, tortious interference with business relations, and intentional infliction of emotional distress. He asserts jurisdiction under 28 U.S.C. §§ 1332, 1343.

On September 26, 1995, Catz filed a motion for a temporary restraining order and preliminary injunction. On September 29, 1995, a conference was held, and the

court heard arguments of counsel. For the following reasons, his motion for temporary restraining order and preliminary injunction is denied, and his complaint is dismissed with prejudice.

I.

Catz is a former law professor and a licensed attorney in Ohio. From 1980 until 1989, he taught at Cleveland Marshall School of Law in Cleveland, Ohio. Between 1989 and 1992, he taught at the District of Columbia School of Law in Washington, D.C. On April 13, 1980, he married Chalker. They have one child from.

On April 10, 1989, a final decree of divorce was entered by the Court of Common Pleas of Cuyahoga County, Ohio ("the Ohio state case"). *Catz v. Catz*, Case No. D191073, slip op. (C.P. Cuyahoga Cty. filed Apr. 10, 1989) (Pl.'s Am. Compl. Ex. A.). It ordered that:

> Neither party is entitled to alimony;
>
> [Catz] shall retain possession of . . . his personal property located in the State of Ohio;
>
> [Chalker] shall retain possession of . . . her personal property which is presently in her possession.

Id. at 3. It also determined that it did not retain jurisdiction over their child and that "it was not the proper forum to determine matters of child support" and visitation. *Id.* at 2.

Chalker has testified that, when Catz was living with her in Georgia, he sent service of the proceedings to his posta[illegible] Miami, Florida, and it was accepted by his

friend who signed for it as her agent. (Pl.'s Appendix at 203-07.) She also testified that she never knew about the Ohio state case until November 1994. (*Id.*)

In 1993, Catz and Chalker moved to Arizona where they lived together. (*Id.* at 200.) He worked as a club owner, and she was a school teacher. In September 1994, they separated, and on November 4, 1994, she filed a petition for divorce in the Pima County Superior Court in Tucson, Arizona ("the Arizona state case"). *Chalker v. Catz*, Case No. D103065, slip op. (Sup. Ct. Pima Cty. filed Mar. 15, 1995) (Pl.'s Am. Compl. Ex. B.) On December 1, 1994, the Arizona state court issued an ex parte order which seized his assets, including those funds held in his accounts with Fidelity, Waterhouse and TIAA/CREF ("the financial institution defendants").

On December 14, 1994, Catz was served with the petition for divorce in the Arizona state case. Also on December 14, 1994, he filed an emergency motion to dismiss, arguing that the divorce granted in the Ohio state case was entitled to full faith and credit. On December 19, 1994, he filed a notice of removal of the Arizona state case to federal court. He also filed an action in federal district court in Arizona ("the first Arizona federal case") against Everlove, Karp, KH&W and B&S ("the attorney defendants").[1] He alleged a claim under 42 U.S.C. § 1983 that the attorney defendants "invok[ed] the

---

[1] The complaint named Karp & Weiss, P.C. Subsequently, Karp & Weiss, P.C. became Karp, Heurlin & Weiss, P.C. when Heurlin joined the firm. The attorney defendants represented Chalker in the Arizona state case.

machinery of the State of Arizona to effect ex parte seizure of [his] property after they were aware of the possible existence of a prior controlling state court judgment. . . . " *Catz v. Everlove,* Case No. CIV 94-873 TUC ACM, Compl. ¶ 20 (D. Ariz. filed Dec. 19, 1994).

On December 20, 1994, Catz filed an action in federal district court in Arizona ("the second Arizona federal case") against Chalker. He sought a declaratory judgment that "the manner in which [she] was served in [the Ohio state case] is constitutional." *Catz v. Chalker,* Case No. CIV 94-879 TUC ACM, Compl. ¶ 10 (D. Ariz. filed Dec. 20, 1994). He also alleged the same claim under 42 U.S.C. § 1983 that he had charged against the attorney defendants. *Id.* ¶ 11.

Thereafter, Catz moved from Arizona and eventually became domiciled in Nashville, Tennessee, living with his son from a prior marriage. On January 12, 1995, the Arizona state case was remanded. *Catz v. Chalker,* Case No. CIV 94-872 TUC ACM, Order (D. Ariz. filed Jan. 12, 1995). On January 27, 1995, he mailed a notice of his new address to the Arizona state court and to the attorneys of Chalker, but the court returned his notice. (Pl.'s Appendix at 12-13.)

On February 6, 1995, a hearing was held in the Arizona state case. Catz was not present. The court ordered him to provide it with a single address and to participate in discovery, including his deposition scheduled for February 9, 1995. (Pl.'s Appendix at 24.) He asserts that he received this order on February 11, 1995. (Pl.'s Aff. ¶ 16.)

On March 2, 1995, another hearing was held in the Arizona state case. Again, Catz was not present.[2] The court found that he did not participate in discovery, that he violated the court's order of February 6, 1995, that he "engaged in unreasonable, groundless, abusive or obstructionist conduct", and that sanctions were appropriate. (Pl.'s Appendix at 29-32.) It struck his emergency motion to dismiss and ordered that he not be permitted to file an answer, oppose any claim, or introduce evidence. It also entered default judgment in favor of Chalker. (*Id.* at 32-33.)

On March 14, 1995, the Arizona state court held a third hearing. Again, Catz was not present.[3] The court heard evidence from Chalker. It found that the divorce obtained in the Ohio state case "is null and void having been fraudulently obtained and [it] shall not [be] given full faith and credit", and that Catz "secreted, dissipated and/or otherwise failed to account for substantial community funds and assets." (Pl.'s Compl. Ex. B, at 2, 4.) It ordered:

> . . .
>
> [Chalker] shall have sole legal . . . custody of the parties' minor child . . . with such visitation . . . in her sole discretion. . . .
>
> [Catz] shall pay to [Chalker] as and for child support the sum of $700.00 per month . . .

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[2] Catz asserts that he received notice of a hearing, but it did not contain a time or date. (Pl.'s Appendix at 26-27.)

[3] Catz asserts that, on March 14, 1995, he received notice of the hearing. (Pl.'s Br. at 9.)

. . .

> [Catz] shall pay to [Chalker] as and for spousal maintenance the sum of $1,000.00 per month. . . . [Chalker] is awarded as her sole and separate property all right, title and interest in and to the following investments, bank and/or retirement accounts: [Fidelity, Waterhouse, CREF, and TIAA].
>
> . . . .

(*Id.* at 4-5.)

Also on March 14, 1995, Catz filed a second notice of removal. On remand, the federal court ordered the clerk of the court not to accept further pleadings without its express permission. *Catz v. Chalker*, Case No. CIV 94-872 TUC ACM, slip op. at 3 (D. Ariz. filed Mar. 31, 1995).

On March 29, 1995, Catz mailed a motion to vacate the default judgment entered in the Arizona state case. However, on April 11, 1995, it mailed his motion back. He alleges that he received his motion on April 14, 1995, one day after time to appeal had expired. (Pl.'s Aff. ¶ 22-23.) He did not file an appeal of the judgment of the Arizona state case. (*Id.* ¶ 25.)

On April 13, 1995, Catz filed a notice of voluntary dismissal in the first Arizona federal case. Also on April 13, 1995, he filed a motion for voluntary dismissal without prejudice in the second Arizona federal case. On May 26, 1995, Chalker filed a brief in opposition. On June 9, 1995, his motion was denied, and his complaint was

dismissed with prejudice. *Catz v. Chalker*, Case No. CIV 94-879 TUC ACM, Order (D. Ariz. filed Jun. 9, 1995).[4]

On July 27, 1995, Catz filed the above captioned case against Chalker and the financial institution defendants.[5] Also on July 27, 1995, he filed a notice of lis pendens regarding the funds held by them.

On August 29, 1995, the Arizona state court issued an order to the financial institution defendants to show cause why they had not transferred to Chalker the assets held by them. It also scheduled a hearing for October 16, 1995. (Pl.'s Br. at 3-4.)

On September 26, 1995, Catz filed his amended complaint. To date, no service of process has been filed on any defendant.

II.

Under Fed. R. Civ. P. 12(b)(6), a complaint does not state a claim upon which relief can be granted if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitled him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). The

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[4] The court adopted the reasoning of Chalker's brief which asserted that Catz "is using both federal and state court processes to abuse and harass [her] rather than to secure the just determination of any valid legal dispute." *Catz v. Chalker*, Case No. CIV 94-879 TUC ACM, Def.'s Br. at 3 (D. Ariz. filed May 26, 1995).

[5] Catz also named the Ohio State Teachers Retirement System. However, in his amended complaint, he did not name this entity.

complaint is to be construed in the light most favorable to the plaintiff, and all factual allegations are to be considered as true. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

A district court has inherent power to dismiss a complaint on the merits. However, it must:

> (1) allow service of the complaint upon the defendant; (2) notify all parties of its intent to dismiss the complaint; (3) give the plaintiff a chance to either amend his complaint or respond to the reasons stated by the district court in its notice of intended *sua sponte* dismissal; (4) give the defendant a chance to respond or file an answer or motions; and (5) if the claim is dismissed, state its reasons for the dismissal.

Tingler v. Marshall, 716 F.2d 1109, 1112 (6th Cir. 1983).

III.

Since July 27, 1995, Catz has had the opportunity to serve the defendants. To date, no notice of service of process has been filed. At the conference on September 29, 1995, the court notified all parties of its intent to dismiss, and it heard arguments of Catz. It also permitted the defendants to respond. The defendants have not answered or filed any motions.

A review of the complaint indicates that the events of which Catz complains occurred in Tucson, Arizona. Therefore, the district court in Arizona is the only proper venue for this matter. *See* 28 U.S.C. § 1391(b).

Title 28 U.S.C. § 1406(a) provides that an action with improper venue shall be dismissed unless it is "in the

interest of justice" that it be transferred to a district or division in which it could have been brought. The court finds that it would not be in the interest of justice to transfer this matter, and therefore, it is dismissed with prejudice.[6]

The complaint does not have an arguable basis in law or fact because it is barred by res judicata. Catz entered an appearance in the Arizona state case and filed the second Arizona federal case. Judgments were rendered on the merits in both cases. His opportunities to attack them ended when he did not appeal. *Southard v. Southard*, 305 F.2d 730, 732 (2d Cir. 1962).[7] His claims in the above captioned case are identical to ones previously raised and decided. *See generally* 18 Wright, Miller & Cooper, *Federal*

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[6] In addition, none of the pleadings filed by Catz assert any facts which would sustain personal jurisdiction over the defendants. *See* Fed. R. Civ. P. 12(b)(2).

[7] In *Southard*, the appellant obtained a divorce from a Nevada court in 1956. In 1960, the appellee filed her own action for divorce in Connecticut. After entering an appearance in the Connecticut action, the appellant's "answer was stricken out upon the pretext that he had failed to answer written interrogatories, of which he had received no notice or knowledge; he was deprived of representation by counsel and a default judgment entered against him in his absence and without his knowledge." *Southard*, 305 F.2d at 731. The Connecticut court granted a divorce, and the appellant did not appeal. Instead, he filed an action for declaratory judgment in United States District Court for the Southern District of New York. The Second Circuit affirmed dismissal on the basis of res judicata.

Practice and Procedure: Jurisdiction § 4407 (1981).[8] Therefore, he is not entitled to relief.

IV.

The complaint filed by Catz is without merit. Accordingly, his motion for temporary restraining order and preliminary injunction is denied, and his complaint is dismissed with prejudice. *See* Fed. R. Civ. P. 12(b)(6).

IT IS SO ORDERED.

/s/ John M. Manos
UNITED STATES
DISTRICT JUDGE

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[8] "To the extent that a second action advances any part of the same claim or cause of action, an otherwise qualified judgment in the first action 'prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceedings.' "

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT S. CATZ, Plaintiff, v. SUSAN R. CHALKER, et al., Defendants.	)	CASE NO. 1:95CV1652 Judge John M. Manos ORDER

Pursuant to the Memorandum of Opinion issued in the above captioned case this date, the plaintiff's motion for temporary restraining order and preliminary injunction is denied, and his complaint is dismissed with prejudice.

IT IS SO ORDERED.

/s/ John M. Manos
UNITED STATES
DISTRICT JUDGE
JMM

APPENDIX 21

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

SHAWN D. CATZ JASON A. CATZ ROBERT S. CATZ 1402 - 17th Avenue South, No. B Nashville, Tennessee 37212, Plaintiffs, vs. SUSAN R. CHALKER 6374 Vuelta Tajo Tucson, Arizona 85718 FIDELITY INVESTMENTS, INC. 164 N. Northern Avenue Boston, Massachusetts 02210 WATERHOUSE SECURITIES 100 Wall Street New York, NY 10005 TIAA-CREF 730 Third Avenue New York, NY 10017 Defendants.	)	S-95-0947 (JUDGE ECHOLS)

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

(Filed Oct. 2, 1995)

Now come the Plaintiffs and complain as follows:

I.

JURISDICTION

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331, as the claims presented herein arise under the due process clause of the Fourteenth Amendment to the United States Constitution, under 28 U.S.C. §1332, as there is complete diversity of citizenship between the parties, and the amount in controversy exceeds Fifty Thousand Dollars ($50,000), exclusive of interest and costs.

II.

THE PARTIES

2. Plaintiff, Shawn D. Catz, is an adult resident of the State of Tennessee.

3. Plaintiff, Jason A. Catz, is an adult resident of the State of Tennessee.

4. Plaintiff, Robert S. Catz, is an adult resident of the State of Tennessee.

5. Defendant, Susan R. Chalker, is an adult resident of the State of Tennessee.

6. Defendant, Fidelity Investments of the State of Massachusetts is a financial services company authorized to sell securities in the State of Tennessee.

7. Defendant, Waterhouse Securities, of the State of New York is a financial services company authorized to sell securities in the State of Tennessee.

8. Defendant, Teachers Insurance Annuity Association-College Retirement Equity Fund of the State of New York is a financial services company authorized to sell securities in the State of Tennessee.

III.

FACTUAL ALLEGATIONS

9. On April 13, 1980, Plaintiff, Robert S. Catz, and Defendant, Susan R. Chalker, were married in Washington, D.C.

10. On April 10, 1989, Plaintiff, Robert S. Catz, and Defendant, Susan R. Chalker, were divorced by final decree entered by the Cuyahoga County Court of Common Pleas, Cleveland, Ohio, in *Catz v. Catz*, No. D191073. *See* Exhibit "A" attached hereto (Ohio divorce decree).

11. On November 4, 1994, Defendant, Susan R. Chalker, filed a petition for dissolution of marriage in the Pima County Superior Court, Tucson, Arizona in *Chalker v. Catz*, No. D103065, collaterally attacking the validity of the Ohio judgment.

12. On December 1, 1994, the Pima County Superior Court issued an *ex parte* temporary restraining order enjoining Defendant financial institutions from the payment, withdrawal, and/or disbursement of accounts in its custody and possession and titled in the name of the Plaintiffs. *See*, Exhibit "B" attached hereto (Temporary Restraining Order).

13. On March 14, 1995, the Pima County Superior Court entered a final decree and judgment in *Chalker v.*

Catz, granting Defendant Chalker a dissolution of marriage by default and invalidated the 1985 Ohio state court judgment upon a finding by the Arizona court that it was not entitled to a full faith and credit under Article IV §1 of the United States Constitution. The Arizona decree further ordered *inter alia* the transfer of all accounts in the custody and possession of Defendant financial institutions and titled in the name of the Plaintiffs. *See*, Exhibit "C" attached hereto (Arizona divorce decree).

14. The manner in which the Arizona state court proceeding was conducted, resulting in a coerced and involuntary entry of the final decree of dissolution by default, deprived the plaintiffs of a full and fair opportunity to be heard on all claims adjudicated on March 14, 1995, and resulted in the taking and transfer of accounts in the custody and possession of Defendant financial institutions and titled in the name of the Plaintiffs by denying them an opportunity to be heard. Furthermore, Plaintiffs, Shawn D. Catz and Jason A. Catz, were never named or joined as parties in the Arizona proceeding, served with a summons and complaint, a temporary restraining order, or the final judgment awarding assets titled to them to Defendant Chalker.

IV.

CLAIM FOR RELIEF

DECLARATORY JUDGMENT 28 U.S.C. §2201

15. Plaintiffs hereby incorporate all paragraphs herein as though fully set forth at length.

16. Plaintiffs' claims are controversies between the parties over which this Court has subject matter, personal, and *in rem* jurisdiction.

17. The Arizona state court judgment was entered in violation of the due process clause of the Fourteenth Amendment to the United States Constitution.

V.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court grant the following relief:

(a) Issue a final declaratory judgment, pursuant to 28 U.S.C. §2301, that the Arizona state court judgment is invalid under 28 U.S.C. §1738, Article IV, §1 of the United States Constitution, and the due process clause of the Fourteenth Amendment to the United States Constitution, and issue corresponding final injunctive relief, pursuant to Rule 65 of the Federal Rules of Civil Procedure permanently enjoining Defendant financial institutions from transferring accounts in their custody and possession and titled in the name of the Plaintiffs.

(b) Award the Plaintiffs their costs and fees herein.

Respectfully submitted,

RAY & BOUSCH

By: /s/ Charles R. Ray
CHARLES R. RAY (#3188)
211 Third Avenue North
P.O. Box 198288
Nashville, TN 37219
(615) 256-2111

Attorney for Plaintiffs

APPENDIX 22

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

SHAWN D. CATZ, et al., Plaintiffs,	)	No. 3-95-0947 JUDGE ECHOLS
v.	)	
SUSAN R. CHALKER, et al., Defendants.	)	

MEMORANDUM

Presently pending before the Court is Defendant Susan Chalker's Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Lack of Personal Jurisdiction, to which Plaintiffs have responded in opposition. For the reasons outlined herein, Defendant's Motion to Dismiss is hereby GRANTED. Also pending are Plaintiffs' Motion for Preliminary Injunction and Plaintiffs' Motion Requesting Interpleader Fidelity to Deposit Bond in Registry of Court in Lieu of Cash Deposit. The Court held a hearing on Plaintiff's Motions for Preliminary Injunction and Interpleader action for over two days. The Court's decision on the Motions for Preliminary Injunction and Interpleader was reserved until its consideration of Defendant's Motion challenging the jurisdiction of the Court. All of these motions were discussed in some fashion at the hearing. Plaintiff also has filed a Motion for Oral Argument on Defendant's Motion to Dismiss and Defendant has filed a Motion to Dismiss Plaintiff's Amended Complaint. By virtue of the Court's ruling on

Defendant's Motion to Dismiss for lack of subject matter jurisdiction, these Motions are hereby DENIED as MOOT.

Plaintiffs, residents of Tennessee, filed this suit requesting that the Court issue a declaratory judgment pursuant to 28 U.S.C. § 2201, that an Arizona state court judgment, entered on March 14, 1995, granting dissolution of the marriage of Plaintiff Robert Catz and Defendant Chalker is invalid the Full Faith and Credit Clause of Article IV, Section 1, and under the Due Process Clause of the Fourteenth Amendment of the United States Constitution. Plaintiffs also request that the Court permanently enjoin Defendant Fidelity Investments of the State of Massachusetts, Defendant Waterhouse Securities, and Defendant Teachers Insurance Annuity Association-College Retirement Equity Fund of the State of New York (collectively "Defendant Financial Institutions") from transferring accounts in their custody titled in the name of Plaintiffs. Plaintiffs further request that the Ohio state court judgment of April 10, 1989, granting dissolution of the marriage between Plaintiff Robert Catz and Defendant Chalker be given full faith and credit under Article IV, Section 1 of the United States Constitution.

Accepting all of Plaintiffs' factual allegations as true, as the Court must at this stage in the litigation, the factual basis for Plaintiffs' claims as stated in the Complaint is as follows: On April 13, 1980, Plaintiff Robert Catz and Defendant Chalker were married in Washington, D.C. On April 10, 1989, the marriage of Plaintiff Robert Catz and Defendant Chalker was dissolved by a final decree entered by the Cuyahoga County Court of Common Pleas

in Cleveland, Ohio ("Ohio Court").[1] Although Plaintiffs contend that the Ohio Court's decree is legally binding on Defendant Chalker, on November 4, 1994, Defendant Chalker filed a petition for dissolution of marriage in the Pima County Superior Court in Tucson, Arizona ("Arizona Court"), collaterally attacking the validity of the Ohio judgment. On December 1, 1994, the Arizona Court issued an *ex parte* temporary restraining order enjoining Defendant Financial Institutions from the payment, withdrawal, and/or disbursement of accounts in its custody and possession and titled in the name of the Plaintiffs. Thereafter, the Arizona Court entered a final decree and judgment on March 14, 1995, granting Defendant Chalker dissolution of marriage by default and invalidating the 1989 Ohio Court's judgment upon a finding by the Arizona Court that the judgment was not entitled to full faith and credit under Article IV, Section I, of the United States Constitution because the Ohio divorce was obtained by fraud. The Arizona decree further ordered that all accounts in the custody and possession of Defendant Financial Institutions and titled in the name of Plaintiffs be transferred to the sole ownership of Defendant Chalker.[2]

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[1] The Ohio Court's decree purported to dissolve the marriage of Defendant Chalker and Plaintiff Robert Catz, awarding Plaintiff Robert Catz property located in the state of Ohio, and awarding Defendant Chalker property in her possession at the time of the decree. The Ohio Court declined to award alimony to either party.

[2] The decree of the Arizona Court also purported to dissolve the marriage of and distribute the marital property. However, unlike the Ohio court, the Arizona Court awarded alimony to Defendant Chalker and further awarded sole

According to the Complaint, the manner in which the Arizona state court proceeding was conducted deprived Plaintiffs of a full and fair opportunity to be heard. For instance, Plaintiffs Shawn and Jason Catz were never joined or named as parties in the Arizona state divorce action and did not receive notice of the proceedings in spite of the fact that each allegedly held an interest in some of the Tennessee investment accounts transferred to Defendant Chalker by the Arizona Court.[3] Furthermore, at a hearing held by this Court on October 26, 1995, Plaintiff Robert Catz testified that he did not receive adequate notice of the Arizona Court hearings that were held on February 6, 1995, March 2, 1995, and March 14, 1995, which resulted, among others things,[4] in the dissolution of his marriage and distribution of his assets.

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custody of the parties' minor child, Aaron Michael Catz, to Defendant Chalker.

[3] Plaintiffs Shawn and Jason Catz are the sons of Plaintiff Robert Catz from a previous marriage.

[4] After Defendant Chalker filed her divorce action on November 4, 1994, an ex parte Temporary Restraining Order was issued by the Court against Plaintiff seizing his assets until further order of the Court. Plaintiff filed an Emergency Motion to Dismiss on December 14, 1994, alleging that the had been divorced from Defendant Chalker in Ohio. On December 19, 1994, Plaintiff filed a notice of removal of the Arizona state case to the United States District Court in Arizona. He also filed an action in the District Court in Arizona against Defendant Chalker and her attorneys under 42 U.S.C. § 1983. On January 12, 1995, the District Court remanded the state divorce suit back to the Arizona state court.

On January 27, 1995, Plaintiff mailed a notice of change of address to the state court, but it was returned to him.

Defendant Chalker filed this Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) contending that the Court lacks subject matter jurisdiction and, further, that pursuant to Federal Rule of Civil Procedure 12(b)(2), the Court lacks personal jurisdiction over Defendant Chalker. In their response, Plaintiffs contend that the Court has subject matter jurisdiction to consider their claims because: 1) there is complete diversity and the

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Afterwards, the Arizona state court held three hearings in Defendant Chalker's divorce case, on February 6, 1995, March 2, 1995, and March 14, 1995. Plaintiff was not present at any of said hearings. Plaintiff alleges that he did not receive adequate notice of any of them. Furthermore, he alleges that the state court hearing on March 14, 1995 was improper because he filed a second notice of removal in the United States District Court in Arizona on March 13, 1995. On March 14, 1995, the District Court remanded the case back to the Arizona state court and ordered the Clerk not to accept further pleadings from Plaintiff without permission of the Court.

As a result of the three state court hearings, the Arizona state court found as follows: 1) Plaintiff was guilty of abusive and obstructive conduct, 2) Plaintiff had violated the court's order to participate in discovery, 3) Plaintiff's Emergency Motion to Dismiss should be stricken, 4) Plaintiff was not allowed to file an Answer, oppose his wife's claim or introduce evidence, 5) Defendant Chalker was entitled to default judgment against Plaintiff, 6) the Ohio divorce was null and void because it was obtained by Plaintiff through fraud, 7) Plaintiff had secreted community marriage funds and assets, 8) Defendant Chalker was awarded sole custody of the child of the parties with Plaintiff's visitation rights to be at Defendant Chalker's sole discretion, 9) Plaintiff was to pay Defendant Chalker $700 per month in child support and $1000 per month in spousal maintenance, and 10) Defendant Chalker was awarded sole ownership of all investments, bank accounts and investment accounts of Plaintiff.

amount in controversy exceeds fifty thousand dollars; 2) the claims presented arise under the Due Process Clause of the United States Constitution, thereby granting the Court federal question jurisdiction;[5] 3) certain claims pertaining to the property settlement arise under Employees' Retirement Income Security Act, ("ERISA"), 29 U.S.C. §§ 1001-1461; and 4) certain claims arise under the Supplemental Jurisdiction Act, 28 U.S.C. § 1367(a).

All of Plaintiffs' claims arise out of the decrees of two state courts, one in Ohio and one in Arizona, each of which purported to grant a divorce to Plaintiff Robert Catz and Defendant Chalker and distribute their assets. The threshold issue to be decided by this Court is that of subject matter jurisdiction. At the outset, we note that federal courts traditionally have declined to exercise jurisdiction over domestic matters where jurisdiction is based on diversity even where the parties are diverse and the amount in controversy requirement has been met. *Bennett v. Bennett*, 1992 WL 357026, No. 91-56177 at *1 (9th Cir. Dec. 3 1992) (holding that divorce and related matters are traditionally not within the subject matter jurisdiction

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[5] Plaintiffs' Complaint includes allegations of constitutional violations under the Due Process Clause of the Fourteenth Amendment and under the Full Faith and Credit Clause of Article IV. However, Plaintiffs referred only to the due process claim in support of their assertion that the Court may exercise its federal question jurisdiction over Defendants. Presumably, Plaintiffs have raised only the due process claim in support of the claim that the Court may exercise federal question jurisdiction in this case because "[t]he Supreme court has held that . . . the full faith and credit clause . . . [does not provide] a source of federal-question jurisdiction." *Evans v. Evans*, 668 F. Supp. 639, 644 (M.D. Tenn. 1987).

of the federal judiciary); *Firestone v. Cleveland Trust*, 654 F.2d 1212, 1215 (6th Cir. 1981) (same); *Huynh Thi Anh v. Levi*, 586 F.2d 625, 632 (6th Cir. 1978) (same); *Karlson v. Karlson*, 1993 WL 616447, No. CA93-0129113 at *1 (D.R.I. Dec. 15, 1993) (same); *Evans v. Evans*, 668 F. Supp. 635, 645 (M.D.Tenn. 1987) (same). The "subject of domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States." *In Re Burns*, 136 U.S. 586, 594 (1890). Furthermore, the so called "domestic relations exception" to federal subject matter jurisdiction applies to claims that involve federal questions where the dispute would deeply involve the court in domestic matters. *Thompson v. Thompson*, 798 F.2d 1547, 1558 (9th Cir. 1986), (citing cases) (stating that "[e]ven when a federal question is presented, federal courts decline to hear disputes which would deeply involve them in adjudicating domestic matters.") *aff'd*, 484 U.S. 174 (1988); *Firestone*, 654 F.2d. at 1215 (noting that "[e]ven when brought under the guise of a federal question action, a suit whose substance is domestic relations generally will not be entertained in federal court") (citing *Denman v. Leedy*, 479 F.2d 1097, 1098 (6th Cir. 1973)); *Karlson*, 1993 WL 616447 at *1 (noting that the domestic relations exception applies to cases arising under federal question jurisdiction).

The primary rationale for the domestic relations exception to subject matter jurisdiction stems from principles of comity and respect for state sovereignty. *Huynh*, 586 F.2d at 632 ("[S]trong policies of federal-state comity and deference to state expertise in the area are the theoretical underpinnings of federal courts' refusal to consider [domestic relations] cases."). As the United States

Court of Appeals for the Sixth Circuit has recognized, "[t]he field of domestic relations involves local problems peculiarly suited to state regulation and control, and peculiarly unsuited to control by federal courts." *Firestone*, 654 F.2d at 1215 (quoting *Buechold v. Ortiz*, 401 F.2d 371, 373 (9th Cir.1968)). Furthermore, federal courts should decline to exercise jurisdiction over domestic matters in order "to prevent friction with states and avoid interfering in state proceedings particularly where the federal questions presented are closely intertwined with issues of strong local interest." *Huynh*, 586 F.2d at 633. In addition to respecting a state's interest in resolving its own domestic matters, federal courts refrain from considering such cases because of the strong state interest in adjudicating domestic matters, the relative expertise of state courts in the area of family law, the ability of state courts to provide ongoing supervision, the availability of professional support services, the undesirability of potentially incompatible federal and state decrees, the danger that parties involved in domestic disputes will play one court system off against another,and the congested federal dockets. *Brown v. Hammonds*, 747 F.2d 320, 322 (5th Cir. 1984) (citing *Crouch v. Crouch*, 566 F.2d 486, 487 (5th Cir. 1978)); *Firestone*, 654 F.2d at 1215; *Huynh*, 586 F.2d at 632.

In the present case, the gravamen of Plaintiffs' claim is that they were denied due process during the Arizona Court's proceedings, which led to the divorce decree of March 14, 1995. Although Plaintiffs have characterized their claims as alleged constitutional violations, the relief sought is to void the Arizona state court decrees mentioned above, which, among other things, voided a prior

Ohio divorce decree, granted a separate divorce, along with child custody, alimony and child support to Defendant Chalker, and transferred his assets to her. Said relief directly implicates the aforementioned principles of comity. Plaintiffs request that the Court declare the dissolution decree entered by the Arizona Court invalid. Any such finding by this Court would necessarily involve the Court in the core of a domestic dispute between husband and wife seeking to obtain a declaration of their marital status, a declaration of rights or obligations arising from said marital status, and to enforce that declaration of status, rights, or obligations. This Court adjudication of Plaintiffs claims will directly impact the marriage status and rights between the husband Plaintiff and his wife, namely Defendant Chalker and Plaintiff Robert Catz.[6]

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[6] The facts of the present case are readily distinguishable from those in *Ankenbrandt v. Richards*, 504 U.S. 689 (1992), where the United States Supreme Court held that the domestic relations exception to federal jurisdiction did not apply to a tort action based on diversity that was filed in federal district court. The plaintiff-wife is *Ankenbrandt* was not seeking a ruling on the validity of her divorce. Rather, the plaintiff alleged that the defendant had committed torts against the plaintiff's children that in no way implicated their status as husband and wife. *Id.* at 704. Moreover, the Supreme Court specifically found that the marital status of the parties had already been determined as a matter of state law and the validity of that ruling was not questioned by the parties. *Id.* at 706. Conversely, in the present case, Plaintiffs have not based their claims on an action that can be resolved without first determining the validity of the state divorce decrees. In fact, not only would the Court be required to review the state court decisions, it is the status of Defendant Chalker and Plaintiff Robert Catz as husband and wife that is at the core of the present litigation.

Bennett, 1992 WL 357026 at *1 (holding that the court had no subject matter jurisdiction where the plaintiff alleged that his constitutional rights were violated in state divorce proceedings because at the core issue was the status of a wife and a husband). Traditionally, marriage, divorce, child custody, support payments and division of marital assets are uniquely state matters which involve distinct issues of state law.

The potential for impermissible interference in state domestic matters is particularly strong under the facts of this case because any ruling by the court would necessarily affect the Arizona state court custody determination. Although the Ohio Court did not address custody matters, the Arizona Court awarded custody of the minor child, Aaron Catz, to Defendant Chalker. Federal courts should be particularly hesitant to interfere with state court custody decrees. For instance, in determining whether a state court has a subject matter jurisdiction

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The present case is more readily comparable to the facts of *Barber v. Barber*, 16 L.Ed. 226 (1859) upon which the domestic relations exception was founded. *See Ankenbrandt*, 504 U.S. at 693 (discussing the origin of the domestic relations exception to federal jurisdiction). In *Barber*, the plaintiff-wife sought to enforce a divorce decree awarded by a New York state court after her husband had fled the jurisdiction and filed for divorce in a Wisconsin court alleging that the wife had abandoned him. In seeking this divorce, the husband failed to disclose the existence of the New York decree to the Wisconsin Court. Although the majority in *Barber* held that federal jurisdiction was proper, the dissent, which thought jurisdiction to be inappropriate, provided the basis for the current domestic relations exception. *See Ankenbrandt*, 504 U.S. at 700 (narrowing the domestic relations exception but upholding the continuing validity of the exception as described by the dissent in *Barber*).

over a custody dispute, "a federal district court, in making its jurisdictional inquiry, would be required to review the state court's determination that it had subject-matter jurisdiction to issue the custody determination in question *under its own laws*. Such as intrusion into state court systems clearly is unwarranted absent affirmative congressional action sanctioning such an intrusion." *Evans*, 668 F. Supp. at 646 n. 16 (emphasis in original). The same sort of inquiry must be made in this case into the Arizona Court's actions and procedures in connection with its pleadings, notices, hearings and decrees.

Not only would the Court's exercise of jurisdiction over this case impermissibly interfere with the Arizona Court's judgment, it may result in incompatible federal and state decrees. *Brown*, 747 F. 2d at 322 (noting the undesirability of "incompatible federal and state court decrees") (quoting *Crouch*, 556 F.2d at 487); *Karlson*, 1993 WL 616447 at *1 (same). If, as Plaintiffs request, the Court declares the Arizona Court's judgment invalid, the Court's ruling would be in direct conflict with the Arizona Court's order relating to the parties' marital status, custody rights, support obligations,and division of property.

The fact that Plaintiffs have framed their Complain in terms of constitutional violations does not alter the Court's conclusion that jurisdiction would be inappropriate. It is well established that principles of comity warrant dismissal even where a party alleges that a state court domestic proceeding violated his or her constitutional rights. *Bennett*, 1992 WL 357026 at *1 (holding no subject matter jurisdiction where the plaintiff claimed his

constitutional rights were violated during state proceedings dissolving his marriage). For instance, in *Edwards v. Goldberg*, the plaintiff alleged that he was not afforded due process notice and a hearing before the state court ordered that his disability and pension benefits be garnished to provide his former spouse child support payments. 1985 WL 12793, No. 847728 at *1 (6th Cir. Oct. 7 1985), *cert. denied*, 475 U.S. 1123 (1986). In dismissing the claim, the Sixth Circuit stated that "it is clear that the federal courts generally lack jurisdiction to review domestic relations matters like this one which would require the federal courts to review plaintiff's divorce decree, the status of his former wife and children, and the legality of the state process." *Id.* at *1 (citing cases).

Furthermore, the Court's conclusion is not altered by the fact that the alleged constitutional violation may have arisen from Defendant Chalker's alleged deceptive behavior. According to Plaintiffs, Defendant Chalker and her attorneys concealed the existence of the prior Ohio divorce decree from the Arizona Court.[7] However, in *Brown v. Hammonds*, 747 F.2d 320, the Fifth Circuit considered whether the federal court's decision to dismiss a suit for want of subject matter jurisdiction that arose from a domestic dispute was proper where the plaintiff alleged that the wife concealed from the court the existence of an

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[7] The naked allegations by Plaintiff concerning the lack of notice of the Arizona state court proceedings, calloused treatment, collusion, unilateral hearings, and draconian measures taken in his absence are shocking. Apparently, Plaintiff has never had a hearing on the merits of his claims. He did not appeal the state court judgment, and his prior suits in the United States District Court were dismissed.

antenuptial agreement. *Id.* at 322. Despite the allegations of misconduct on the part of the wife, the Court held that the plaintiff's claims fell clearly within the domestic relations exception. *Id.* Similarly, an assertion that Defendant Chalker engaged in misconduct, even if the misconduct may have resulted in an incorrect ruling by the state court, does not alone confer jurisdiction on a federal district court.

In addition to the fact that the domestic relations exception and the accompanying comity principles warrant dismissal, it is clear that the Court does not have jurisdiction under the *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine was developed from two Supreme Court cases, *Rooker v. Fidelity Trust, Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). In each case, the Supreme Court considered whether a federal district court could exercise jurisdiction to determine the validity of a state court judgment. The Supreme Court held federal district courts "do not have jurisdiction . . . over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional. Review of those decisions may be had only in [the United States Supreme Court]." *Feldman*, 460 U.S. at 486 (citing 28 U.S.C. § 1257). As the Supreme Court stated, "[t]he jurisdiction possessed by the District Courts is strictly original." *Rooker*, 263 U.S. at 415-416 ("if the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction."). *See also Keene Corp. v. Cass*, 908

F.2d 293, 296 (8th Cir. 1990) ("Federal courts, with the exception of the United States Supreme Court, do not possess appellate jurisdiction over state court proceedings."); *Claughton v. Donner*, 771 F. Supp. 1200, 1204 (S.D. Fla.1991) (citing cases) (holding "[A] federal district court may not review a state court judgment even upon a claim that the judgment violates the United States Constitution. The remedy for such a violation is an appeal to the state appellate courts, whose decision may be reviewed by the United States Supreme Court.").

It is clear that the *Rooker-Feldman* doctrine applies even where the plaintiff alleges that his or her constitutional rights have been violated. For instance, in *Wijas v. Nelson*, 1994 WL 117988, No. 92-3606 (7th Cir. April 5, 1994), the United States Court of Appeals for the Seventh Circuit held that the *Rooker-Feldman* doctrine warranted dismissal where the plaintiff alleged violations of constitutional rights under the First, Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments and sought injunctive relief to enjoin sale of his home. *Id.* The Court held dismissal was warranted because the appropriate relief was appellate review in the state court system and then writ of certiorari to the United States Supreme Court. *Id.*; *see also Ritter v. Ross*, 922 F.2d 750, 754 (7th Cir. 1993) (holding that artificial attempts to redefine a claim as a due process violation were insufficient to cast jurisdiction upon the district court where the plaintiffs were really requesting appellate review of the state court's decision); *Keene*, 908 F.2d at 297 (holding that *Rooker-Feldman* doctrine applies where a litigant attempts to circumvent the requirement of seeking direct review in the United States Supreme Court "by casting her lawsuit

as a section 1983 action") (citations omitted). Furthermore, the doctrine applies even where the alleged constitutional violations arose from deficiencies in the state court proceedings themselves. For instance, in *Fariello v. Campbell*, 860 F. Supp. 54 (E.D.N.Y. 1994), the United States District Court for the Eastern District Court of New York considered whether a federal court could exercise jurisdiction over a plaintiff's claims that the state family court violated the plaintiff's constitutional rights during a contempt proceeding. Among his various allegations of constitutional violations committed by the family court, the plaintiff contended that he was denied an appeal by being immediately brought before the judge without an opportunity to respond and review the findings that held him in contempt. *Id.* at 65. In holding that the district court had no jurisdiction to consider the plaintiff's claims, the Court reasoned that "[a]ny constitutional error committed by the Family Court in [the plaintiff's] contempt proceeding, whether in the interpretation of statutes or procedurally, is a matter for the state appellate courts to review, or the United States Supreme court if it grants certiorari." *Id.* at 67; *see also Bennett*, 1992 WL 357026 at *1 (holding that the federal court had no subject matter jurisdiction where the plaintiff alleged that his constitutional rights were violated in state divorce proceedings).

In order for the *Rooker-Feldman* doctrine to apply to a claim presented in federal court, the issue before the Court must be " 'inextricably intertwined' with the claim asserted in a state court proceeding." *Keene*, 908 F.2d at 296 (quoting *Feldman*, at 482 n. 16)). A claim is inextricably intertwined with a state court judgment "only to the

extent that the state court wrongly decided the issues before it. Where federal relief can be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment." *Wijas*, 1994 WL 117988 at *2 (quoting *Keene*, 908 F.2d at 296-97). *See also Fariello*, 860 F. Supp. at 65 ("If . . . the . . . suit challenges the decision of the state court on the grounds that the state court's interpretation of a statute was unconstitutional, or that the state court committed a constitutional error in arriving at its decision, the federal court does not have subject matter jurisdiction to hear the case.") (citing cases). Thus, if the plaintiff is requesting that the Court determine that a state court's judgment or decree was incorrect, the *Rooker-Feldman* doctrine is implicated.

Once it has been determined that the relief requested requires a federal district court to determine whether a state court's ruling was incorrect, the Court must next determine whether the plaintiff's claims constitutes a general or specific grievance. In particular, a district court has jurisdiction to hear general challenges to state procedures and laws. However, they do not have jurisdiction over challenges arising out of particular cases even where those challenges allege that the state court's action was unconstitutional. *Feldman*, 460 U.S. at 486. As explained by the Court in *Fariello*:

> [T]he Rooker-Feldman doctrine has come to mean that, if the [suit] challenges a rule or statute relied upon by the state court on the

> grounds that the rule or statute is itself unconstitutional, the federal court has the subject matter jurisdiction to hear the case. . . . If, however, the [suit] challenges the decision of the state court on the grounds that the state court's interpretation of a statute was unconstitutional, or that the state court committed a constitutional error in arriving at its decision, then the federal court does not have jurisdiction to hear the case.

Fariello, 860 F. Supp. at 66 (citing cases).

Plaintiffs' claim clearly requests this Court to make a determination that the ruling by the Arizona Court was incorrect. The Arizona Court found that the Ohio Court divorce decree was not entitled to full faith and credit. Plaintiffs have requested that this Court declare that the Ohio decree is entitled to full faith and credit, a ruling which necessitates a finding that the Arizona Court's ruling was incorrect. Plaintiffs further request that the Court find that the Arizona Court violated their rights under the Due Process Clause of the Fourteenth Amendment by failing to give Plaintiffs adequate notice of state court proceedings and failing to join Plaintiffs Shawn and Jason Catz in those proceedings. Again, the gravamen of Plaintiffs' claims is that the Arizona Court ruling was erroneous because of the procedural mistakes allegedly committed by that court.

Finally, Plaintiffs request the Defendant Financial Institutions be enjoined from transferring any property titled in the name of Plaintiffs. The granting of such a request would clearly required a finding by this Court that the Arizona Court's decree as it pertains the distribution of the marital assets was incorrect. Accordingly, it is

clear that Plaintiffs' claims implicate the *Rooker-Feldman* doctrine.

Not only is it clear that Plaintiffs seek a determination by this Court that the Arizona Court's ruling is erroneous, the grounds upon which they base this claim constitute a specific grievance over which this Court cannot exercise its jurisdiction. Plaintiffs have not alleged a general constitutional violation over which this Court may exercise its jurisdiction. Plaintiffs have not alleged that the state law notice requirements are unconstitutional. Nor have Plaintiffs alleged that the rules governing joinder of third parties to divorce proceedings are unconstitutional. Rather, Plaintiffs' principal grievance is that the Arizona state court failed to follow proper procedural and legal requirements and by doing so, it denied him a fair hearing and violated their constitutional rights to due process. As such, Plaintiffs' claim constitutes a specific grievance which this Court is precluded from reviewing.[8]

In addition to requesting that the divorce decree be declared null and void, Plaintiffs request the Court to

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[8] Furthermore, although the violations alleged by Plaintiffs are egregious, this does not change the conclusion that this Court cannot consider their claims. In *Feldman*, the Supreme Court held that the federal district court was clearly without jurisdiction to consider claims even though the plaintiffs alleged that the state court had "acted arbitrarily and capriciously." *Feldman*, 460 U.S. at 486. Thus, although Plaintiffs may feel deeply wronged by the alleged unconstitutional actions of the Arizona Court, the proper relief for their claims is appellate review in the state court system and then writ of certiorari to the United States Supreme Court.

enjoin Defendant Financial Institutions from transferring property in accordance with the Arizona Court's decree. Of course, if the Court is unable to review the Arizona Court's marital dissolution decree, then the Court cannot enjoin Defendant Financial Institutions' action on the basis of its invalidation of the divorce decree. Moreover, injunctive relief involving property matters would impermissibly interfere with state court proceedings and would create the friction between state and federal bodies. As noted by the Sixth Circuit, "traditional notions of comity . . . [require] that, as between state and federal courts, jurisdiction must be yielded to the court that first acquires jurisdiction over the property . . . not only where property is judicially seized, but in all cases where 'to give effect to it [sic] jurisdiction, the court must control the property.'" *In re Washington*, 623 F.2d 1169, 1172 (6th Cir. 1980), *cert. denied*, 449 U.S. 1101 (1981).

Plaintiffs further claim that the Court may properly exercise jurisdiction under ERISA. However, it is clear that the principles of comity under the domestic relations exception as discussed above apply even where the issues are framed in terms of an ERISA violation. *See Reyher v. Trust Annuity Plan for Pilots of Trans World Airlines, Inc.*, 891 F. Supp. 591, 593 (M.D. Fla. 1995) (holding district court did not have subject matter jurisdiction to consider a claim where a party requests a determination of his rights under an ERISA plan following a state court divorce proceeding); *Eichelberger v. Eichelberger*, 584 F. Supp. 899, 901 (S.D. Tex. 1984) (same). Although Section 1056 of ERISA grants the federal court concurrent jurisdiction with the state courts, *Clark v. Superior Court of District of Columbia*, 702 F. Supp. 4, 8 (D.D.C. 1988), in

order to declare who is entitled to benefits under an ERISA plan, the Court would be required "to involve itself unnecessarily in this state court divorce proceeding, which is comprehensively and exclusively regulated by [state] laws. . . . [T]he exercise of jurisdiction by the Court would constitute an unwarranted intrusion into state affairs." *Eichelberger*, 584 F. Supp. at 901.

Finally, the Court does not have jurisdiction to consider any supplemental state law claims asserted by Plaintiffs. As noted above, the Court lacks subject matter jurisdiction to consider Plaintiffs' claims based on the domestic relations exception and the accompanying principles of comity, and based on the *Rooker-Feldman* doctrine. As all of the Plaintiffs' federal claims have been dismissed, the Court declines to exercise supplemental jurisdiction over any remaining state law claims. *See* 28 U.S.C. § 1367(c)(3). Accordingly, Defendant's Motion to Dismiss is hereby GRANTED in its entirety.

Both parties have also addressed the issue of whether the Court has personal jurisdiction over Defendant Chalker. However, since the Court determined it does not have subject matter jurisdiction to consider Plaintiffs' claims, it is unnecessary to determine whether the Court may exercise personal jurisdiction over Defendant Chalker.

For the foregoing reasons, Defendant's Motion to Dismiss is GRANTED, and this case is hereby DISMISSED. In light of the Court's ruling on Defendant's

Motion to Dismiss, all remaining Motions are hereby DENIED as MOOT.

/s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

SHAWN D. CATZ, et al., Plaintiffs,	)	
v.	)	No. 3-95-0947
SUSAN R. CHALKER, et al., Defendants.	)	JUDGE ECHOLS

ORDER

Presently pending before the Court is Defendant Susan Chalker's Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Lack of Personal Jurisdiction (Docket Entry No. 14), to which Plaintiffs have responded in opposition. for the reasons outlined in the Memorandum contemporaneously entered herewith, Defendant's Motion to Dismiss is hereby GRANTED. Also pending are Plaintiffs' Motion for Preliminary Injunction (Docket Entry No. 3) and Plaintiffs' Motion Requestion Interpleader Fidelity to Deposit Bond in Registry of Court in Lieu of Cash Deposit (Docket Entry No. 17). The Court held a hearing on Plaintiff's Motions for Preliminary Injunction and Interpleader action for over two days. The Court's decision on the Motions for Preliminary Injunction and Interpleader was reserved until its consideration of Defendant's Motion challenging the jurisdiction of the Court. All of these motions were discussed in some fashion at the hearing. Plaintiff also has filed a Motion for Oral Argument on Defendant's Motion to Dismiss (Docket Entry No. 35) and Defendant has filed a Motion to Dismiss Plaintiff's Amended Complaint (Docket Entry

No. 43). By virtue of the Court's ruling on Defendant's Motion to Dismiss for lack of subject matter jurisdiction, these Motions are hereby DENIED as MOOT.

It is so ORDERED.

/s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES
DISTRICT JUDGE

APPENDIX 23

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

SHAWN D. CATZ, et al.	)	NO. 3-95-0947
Plaintiffs,	)	JUDGE ECHOLS
	)	Magistrate Judge
vs.	)	Haynes
SUSAN R. CHALKER, et al.	)	
	)	
Defendants.	)	

PLAINTIFFS' MOTION FOR LEAVE TO FILE THE ATTACHED AMENDED COMPLAINT PURSUANT TO RULE 15(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE

Plaintiffs hereby move the Court, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure for leave to file an amended complaint as attached hereto. On February 7, 1996 this Court issued a memorandum opinion and order dismissing this action for want of subject-matter jurisdiction under *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983) as plaintiffs' complaint alleged claims which "constitute[s] a specific grievance [regarding constitutional irregularities before the Arizona divorce court] which this Court is precluded from reviewing." *Id.* at 17. The proffered amended complaint cures that defect as plaintiffs allege in the amended complaint therein a general challenge under *Fuentes v. Shevin*, 407 U.S. 67 (1972), *Armstrong v. Manzo*, 380 U.S. 545 (1965) that the Arizona "state law notice requirements are unconstitutional", and a general challenge under *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)

that Arizona's "rules governing joinder of third parties to divorce proceedings are unconstitutional" which this Court held if alleged would confer on it original subject-matter jurisdiction to hear. Memorandum at 16-17.

After dismissing a complaint for lack of jurisdiction a district court should "freely" allow amendment of the complaint once it appears at all possible that plaintiff can promptly correct the jurisdictional defect once brought to the plaintiff's attention by the court. *Moore v. City of Paducah*, 790 F.2d 557, 559-562 (6th Cir. 1986); *Tefft v. Stewart*, 689 F.2d 637, 639 (6th Cir. 1982); *Kenston v. Roberts*, 717 F.2d 1295, 1300 (9th Cir. 1969); *Licensed Div. District No. 1 v. Defries*, 943 F.2d 474, 477 (4th Cir. 1991). Moore's Federal Practice § 15.10 (Amendments freely granted after dismissal to establish or correct jurisdictional defects).

Respectfully submitted,

BY /s/ Charles R. Ray (by DSH)
CHARLES R. RAY #3188
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211 Third Avenue North
P.O. Box 198288
Nashville, TN 37219
(615) 256-2111

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded by first-class, U.S. Mail, postage pre-paid, to Mr. Byron Trauger, Esquire, Doramus & Trauger, 222 Fourth Avenue North, Nashville, TN

37201 and to Mr. William H. Farmer, Esquire, Waller, Lansden, Dortch & Davis, 2100 Nashville City Center, Nashville, TN 37219-1760 on this the ___ day of February, 1996.

/s/ Charles R. Ray (by DSH)
CHARLES R. RAY

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

SHAWN D. CATZ, et al. Plaintiffs, vs. SUSAN R. CHALKER, et al. Defendants.	)	NO. 3-95-0947 JUDGE ECHOLS Magistrate Judge Haynes

PLAINTIFFS' AMENDED COMPLAINT

Now come the plaintiffs and complain as follows:

I. JURISDICTION

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as the claims presented herein arise under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, under 28 U.S.C. § 1332 as there is complete diversity of citizenship between the parties and the amount in controversy exceeds $50,000.00 exclusive of interests and costs, 28 U.S.C. § 1343(a)(3)(4) for claims arising under 42 U.S.C. § 1983 and supplemental jurisdiction under 28 U.S.C. § 1367 to hear all related claims arising under the same nucleus of operative facts. This Court has personal jurisdiction over the defendants pursuant to Tennessee's Long-Arm statute, T.C.A. § 20-2-214(a)(2) & (a)(3).

II. THE PARTIES

2. Plaintiff Shawn D. Catz is an adult resident of the State of Tennessee.

3. Plaintiff Jason A. Catz is an adult resident of the State of Tennessee.

4. Plaintiff Robert S. Catz is an adult resident of the State of Tennessee.

5. Defendant Susan R. Chalker is an adult resident of the State of Tennessee.

6. Defendant Fidelity Investments of the State of Massachusetts is a financial services company authorized to sell securities in the State of Tennessee.

7. Defendant Waterhouse Securities of the State of New York is a financial services company authorized to sell securities in the State of Tennessee.

8. Defendant Teachers Insurance Annuity Association-College Retirement Equity Fund of the State of New York is a financial services company authorized to sell securities in the State of Tennessee.

III. FACTUAL ALLEGATIONS

9. On April 13, 1980 plaintiff Robert S. Catz and defendant Susan R. Chalker were married in Washington, D.C.

10. On April 10, 1989 plaintiff Robert S. Catz and defendant Susan R. Chalker were divorced by final decree entered by the Cuyahoga County Court of Common Pleas, Cleveland, Ohio, in *Catz v. Catz*, No. D191073.

11. On November 4, 1994, defendant Susan R. Chalker filed a petition for dissolution of marriage in the Pima County Superior Court, Tucson, Arizona in *Chalker v. Catz*, No. D103065 collaterally attacking the validity of the Ohio judgment.

12. On December 1, 1995 the Pima County Superior Court issued an *ex parte* temporary restraining order without prior notice and service of legal process on the parties affected by the enjoining of defendant financial institutions from the payment, withdrawal and/or disbursement of accounts in its custody and possession and titled in the name of the plaintiffs. The *ex parte* temporary restraining order issued without prior notice seizing plaintiffs' assets was accomplished without the benefit of a pre-seizure hearing nor were plaintiff ever provided an opportunity for some kind of prompt post-seizure hearing. In regards to plaintiff Shawn D. Catz, a legal resident of the State of Tennessee at the time of the issuance of the temporary order restraining his property and plaintiff Jason A. Catz the seizure of the assets occurred without ever being served with legal process and ever being named or joined as party defendants as required by the U.S. Constitution. The manner in which plaintiffs' assets were seized under color of law and the failure of the Arizona statute and rules governing temporary restraining orders in divorce proceedings to require notice and an opportunity for a prompt and immediate post-seizure hearing within a time certain and other constitutional safeguards to protect against wrongful and erroneous deprivations such as requiring the filing of a bond, and to require notice and joinder of third real parties of interest to divorce proceeding affected by the issuance of open-

ended temporary restraining orders over their property which then merge into final orders without a hearing was authorized and undertaken pursuant to A.R.S. § 25-315D and 25-315F which plaintiffs challenge herein as unconstitutional as violative of the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, rights clearly established in *Fuentes v. Shevin*, 407 U.S. 67 (1972), *Armstrong v. Manzo*, 380 U.S. 545 (1965) and *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) and its progeny.

13. On March 14, 1995, the Pima County Superior Court entered a final decree and judgment in *Chalker v. Catz* granting defendant Chalker a dissolution of marriage by default and invalidated the 1989 Ohio state court judgment upon a finding by the Arizona court that it was not entitled to full faith and credit under Article IV § 1 of the U.S. Constitution. The Arizona final decree further ordered *inter alia* the permanent deprivation and transfer of all property in the custody and possession of defendant financial institutions and titled in the name of the plaintiffs, all legal residents of Tennessee without ever providing the named plaintiffs with the opportunity for some kind of post-seizure hearing prompt or otherwise before a permanent deprivation of their property. On October 16, 1995 the Arizona court held a show cause hearing under threat of contempt of court to order the defendant financial institutions to permanently transfer Tennessee plaintiffs' assets titled and recorded in the State of Tennessee to defendant Chalker.

14. As a consequence of numerous procedural and constitutional irregularities which occurred before the

Arizona divorce court resulted in a coerced and involuntary entry of a final decree of dissolution by default deprived the plaintiffs of a full and fair opportunity to be heard on all claims adjudicated before the Arizona divorce court and resulted in plaintiff Robert S. Catz being denied an opportunity to file a direct appeal of the final judgment to the Arizona court of appeals and to ultimately seek certiorari review to the United States Supreme Court pursuant to 28 U.S.C. § 1257. Nor could plaintiffs Shawn D. Catz and Jason A. Catz, never joined as third parties to the divorce proceeding, even file a direct appeal challenging the taking and transfer of their accounts in the custody and possession of defendant financial institutions and owned and titled in their name denying them all an opportunity to be heard as plaintiffs Shawn D. Catz and Jason A. Catz were never named or joined as parties in the Arizona divorce proceeding, served with a summons and complaint, the temporary restraining order, the final judgment, the show cause hearing to permanently transfer their property recorded and titled to them in the State of Tennessee to defendant Chalker.

IV. CLAIMS FOR RELIEF

Declaratory Judgment 28 U.S.C. § 2201

15. Plaintiffs hereby incorporate all paragraphs herein as though fully set forth at length.

16. Plaintiffs claims are controversies between the parties over which this Court has subject matter, personal and supplemental jurisdiction.

17. Arizona Revised Statutes § 25-315D and § 25-315F authorizing divorce courts to issue interim and permanent prejudgment takings of property without an opportunity of some kind of immediate and prompt post-seizure hearing within a specific time certain contesting the validity of the taking of their property before permanent deprivation as alleged herein in divorce proceedings and the Arizona statute's total failure to provide for and require notice and joinder of third parties to divorce proceedings affected by the taking of their property is unconstitutional on its face as it violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983 rights clearly established in *Fuentes v. Shevin*, 497 U.S. 67 (1972), *Armstrong v. Manzo*, 380 U.S. 545 (1965) and *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) and its progeny.

V. PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that the Court grant the following relief:

A. Issue a final declaratory judgment pursuant to 28 U.S.C. § 2201 that the Arizona statutory scheme as challenged herein as alleged by the plaintiffs violates the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, and issue corresponding final injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure by permanently enjoining the taking of their property by prohibiting defendant financial institutions from transferring accounts in their custody and possession under the authority of the final Arizona state court judgment owned and titled in the name of the plaintiffs.

B. Award plaintiffs their costs and fees herein, including reasonable attorneys fees pursuant to 42 U.S.C. § 1988.

Respectfully submitted,

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211 Third Avenue North
P.O. Box 198288
Nashville, TN 37219
(615) 256-2111

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded by first-class, U.S. Mail, postage prepaid, to Mr. Byron Trauger, Esquire, Doramus & Trauger, 222 Fourth Avenue North, Nashville, TN 37201 and to Mr. William H. Farmer, Esquire, Waller, Lansden, Dortch & Davis, 2100 Nashville City Center, Nashville, TN 37219-1760 on this the ___ day of February, 1996.

/s/ Charles R. Ray (by DSH)
CHARLES R. RAY

APPENDIX 24

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

SHAWN D. CATZ, et al.)	**No. 3-95-1148**
Plaintiffs,)	**JUDGE HAYNES**
v.)	**Magistrate Judge Haynes**
LEONARD I. KARP)	**JURY DEMAND**
et al.)	**(Filed Feb. 26, 1996)**
Defendants.)	

PLAINTIFFS' FIRST AMENDED COMPLAINT

Now come the plaintiffs and complain as follows:

I. JURISDICTION

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as the claims presented herein arise under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, under 28 U.S.C. § 1332 as there is complete diversity of citizenship between the parties and the amount in controversy exceeds $50,000.00 exclusive of interests and costs, 28 U.S.C. § 1343(a)(3)(4) for claims arising under 42 U.S.C. § 1983. This Court has personal jurisdiction over the defendants pursuant to Tennessee's Long-Arm statute, T.C.A. § 20-2-214(a)(2) & (a)(3).

II. THE PARTIES

2. Plaintiff Shawn D. Catz is an adult resident of the State of Tennessee.

3. Plaintiff Jason A. Catz is an adult resident of the State of Tennessee.

4. Plaintiff Robert S. Catz is an adult resident of the State of Tennessee.

5. Defendant Leonard I. Karp, dba Karp, Heurlin & Weiss is an adult resident of the State of Arizona.

6. Defendant Annette Everlove, dba Butler & Stein is an adult resident of the State of Arizona.

7. Defendant Susan Chalker is an adult resident of the State of Arizona.

8. Defendant Fidelity Investments of the State of Massachusetts is a financial services company authorized to sell securities in the State of Tennessee.

9. Defendant Waterhouse Securities of the State of New York is a financial services company authorized to sell securities in the State of Tennessee.

10. Defendant Teachers Insurance Annuity Association-College Retirement Equity Fund of the State of New York is a financial services company authorized to sell securities in the State of Tennessee.

III. FACTUAL ALLEGATIONS

11. On April 13, 1980 plaintiff Robert S. Catz and defendant Susan R. Chalker were married in Washington, D.C.

12. On April 10, 1989 plaintiff Robert S. Catz and defendant Susan R. Chalker were divorced by final decree entered by the Cuyahoga County Court of Common Pleas, Cleveland, Ohio, in *Catz v. Catz*, No. D191073.

13. On November 4, 1994, defendants Leonard Karp and Annette Everlove as attorneys for defendant Susan R. Chalker filed a petition for dissolution of marriage in the Pima County Superior Court, Tucson, Arizona in *Chalker v. Catz*, No. D103065 collaterally attacking the validity of the Ohio judgment.

14. On December 1, 1995 the Pima County Superior Court issued an *ex parte* temporary restraining order without prior notice and service of legal process on the parties affected by the enjoining of defendant financial institutions from the payment, withdrawal and/or disbursement of accounts in its custody and possession and titled in the name of the plaintiffs. The *ex parte* temporary restraining order issued without prior notice seizing plaintiffs' assets was accomplished without the benefit of a pre-seizure hearing nor were plaintiffs ever provided an opportunity for some kind of prompt post-seizure hearing. In regards to plaintiff Shawn D. Catz and plaintiff Jason A. Catz the seizure of the [sic] their property occurred without ever being served with legal process and ever being named or joined as party defendants as required by the U.S. Constitution. The manner in which plaintiffs' assets were seized under color of law with the off the record covert assistance of a jstate [sic] judicial officer and the failure of the Arizona statute and rules governing temporary restraining orders in divorce proceedings to require notice and an opportunity for a prompt and immediate post-seizure hearing within a time

certain and other constitutional safeguards to protect against wrongful and erroneous deprivations such as requiring the filing of a bond, and to require notice and joinder of third real parties of interest to divorce proceeding affected by the issuance of open-ended temporary restraining orders over their property which then merge into final orders without a hearing was authorized and undertaken pursuant to A.R.S. § 25-315D and 25-315F which plaintiffs challenge herein as unconstitutional as violative of the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, rights clearly established in *Fuentes v. Shevin*, 407 U.S. 67 (1972), *Armstrong v. Manzo*, 380 U.S. 545 (1965) and *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) and its progeny.

15. On March 14, 1995, the Pima County Superior Court entered a final decree and judgment in *Chalker v. Catz* granting defendant Chalker a dissolution of marriage by default and invalidated the 1989 Ohio state court judgment upon a finding by the Arizona court that it was not entitled to full faith and credit under Article IV § 1 of the U.S. Constitution. The Arizona final decree further ordered *inter alia* the permanent deprivation and transfer of all property in the custody and possession of defendant financial institutions and titled in the name of the plaintiffs, all legal residents of Tennessee without ever providing the named plaintiffs with the opportunity for some kind of post-seizure hearing prompt or otherwise before a permanent deprivation of their property.

16. As a consequence of numerous procedural and constitutional irregularities which occurred before the Arizona divorce court resulted in a coerced and involuntary entry of a final decree of dissolution by default deprived

the plaintiffs of a full and fair opportunity to be heard on all claims adjudicated before the Arizona divorce court and resulted in plaintiff Robert S. Catz being denied an opportunity to file a direct appeal of the final judgment to the Arizona court of appeals and to ultimately seek certiorari review to the United States Supreme Court pursuant to 28 U.S.C. § 1257. Nor could plaintiffs Shawn D. Catz and Jason A. Catz, never joined as third parties to the divorce proceeding, even file a direct appeal challenging the taking and transfer of their accounts in the custody and possession of defendant financial institutions and owned and titled in their name denying them all an opportunity to be heard as plaintiffs Shawn D. Catz and Jason A. Catz were never named or joined as parties in the Arizona divorce proceeding, served with a summons and complaint, the temporary restraining order, the final judgment, the show cause hearing restraining order, the final judgment, the show cause hearing to permanently transfer their property recorded and titled to them in the State of Tennessee to defendant Chalker.

IV. CLAIMS FOR RELIEF

Declaratory Judgment 28 U.S.C. § 2201

17. Plaintiffs hereby incorporate all paragraphs herein as though fully set forth at length.

18. Plaintiffs claims are controversies between the parties over which this Court has subject matter, personal and supplemental jurisdiction.

19. Arizona Revised Statutes § 25-315D and § 25-315F authorizing divorce courts to issue interim and permanent pre-judgment takings of property without an opportunity of some kind of immediate and prompt post-seizure hearing within a specific time certain contesting the validity of the taking of their property before permanent deprivation as alleged herein in divorce proceedings and the Arizona Statute's total failure to provide for and require notice and joinder of third parties to divorce proceedings affected by the taking of their property is unconstitutional, on its face as it violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983 rights clearly established in *Fuentes v. Shevin,* 497 U.S. 67 (1972), *Armstrong v. Manzo,* 380 U.S. 545 (1965) and *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306 (1950) and its progeny.

Damages under 42 U.S.C. § 1983 and Tennessee Common Law

20. Plaintiffs hereby incorporate all paragraphs herein as though fully set forth at length.

21. Plaintiffs assert a claim for damages under 42 U.S.C. § 1983 AS PROVIDED BY *Lugar v. Edmondson Oil,* 457 U.S. 922 (1982) as against all defendants.

22. Plaintiffs assert a claim for damages for conversion and wrongful attachment of property as provided by *Barger v. Webb,* 391 S.W.2d 664 (Tenn.1965); *Lance v. Commerce Union Bank,* 764 S.W2d 207 (Tenn.App. 1988); *Ball v. Overton Square, Inc.,* 713 S.W.2d 536 (Tenn. App.1987) as against all defendants.

V. PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that the Court grant the following relief:

A. Issue a final declaratory judgment pursuant to 28 U.S.C. § 2201 that the Arizona statutory scheme as challenged herein as alleged by the plaintiffs violates the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, and issue corresponding final injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure by permanently enjoining the taking of their property by prohibiting defendant financial institutions from transferring accounts in their custody and possession under the authority of the final Arizona state court judgment owned and titled in the name of the plaintiffs.

B. Award plaintiffs actual, compensatory, consequential and punitive damages in an amount in excess of one-million dollars against all defendants.

C. Set this matter down for a jury trial pursuant to Rule 38 of the Federal Rules of Civil Procedure.

D. Award plaintiffs their costs and fees herein, including reasonable attorneys fees pursuant to 42 U.S.C. 1988.

Respectfully submitted,

/s/ Robert S. Catz
ROBERT S. CATZ
211 Third Avenue North
P. O. Box 198288
Nashville, TN 37219
(615) 256-2111

APPENDIX 25

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

SHAWN D. CATZ, et al.	)	
Plaintiffs	)	
	)	No. 3:95-1148
v.	)	Judge Echols
LEONARD I. KARP, et al.	)	
Defendants	)	

ORDER

This case came before the Magistrate Judge pursuant to Local Rule 11. The Magistrate Judge was directed to conduct any necessary pretrial proceedings pursuant to 28 U.S.C. § 636(b)(1)(A) and Fed. R. Civ. P. 72(a).

At the status conference, the lead plaintiff and counsel for the defendants were present. At the conference, counsel for the defendants noted the pendency of motions to dismiss the complaint for lack of subject matter and/or personal jurisdiction. Counsel and the lead plaintiff noted that there has been a prior action filed in this Court as well as several district courts in different states. The lead plaintiff stated that if the defendants' motions to dismiss were granted for lack of personal jurisdiction, then he would file another complaint in the District Court for the District of Columbia. The lead plaintiff stated, however, that if the defendants' motions to dismiss were denied, then he would file an amended complaint to have all claims presented in this action. In addition, defendants' counsel noted that the plaintiff has

filed a writ of attachment for which counsel sought relief to file responses pending a determination of the pending motions to dismiss.

Inasmuch as there have been prior actions arising out of the same facts that give rise to the claims in the present action, the Magistrate Judge concludes that pending the Court's determination on the jurisdictional issues, all claims between the parties should be before the Court. Accordingly, the Magistrate Judge **ORDERS** the plaintiff to file an amended complaint setting forth any and all legal claims against these defendants arising out of the factual allegations in this complaint.

The Magistrate Judge further finds that the plaintiffs should be **STAYED** from filing any further actions against these defendants in any other district court pending resolution of the defendants' motions to dismiss. The Court has the inherent authority to enter orders to control the management of the parties before the Court. In *Landis v. North American Company*, 299 U.S. 248, 254, 57 S.Ct. 163, 166, 81 L.Ed. 153 (1936), writing for the Court, Justice Cardozo ruled in a similar case involving the stay of pending actions by the same parties in different district courts that there is "power inherent in every court to control the dispositions of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." A District Court also has the authority to transfer a case "in the interests of justice." 28 U.S.C. § 1406(a).

As to the plaintiff's concerns that the statute of limitations may run against the claims that he may file in the District of Columbia as of October, 1996, if the District

Judge has not decided the pending motions by September 15, 1996, then the plaintiff can seek relief from this Order.

In light of a substantial question as to whether the Court has jurisdiction, the Magistrate Judge finds that any further case management should be deferred pending resolution of the motions. The Magistrate Judge further finds that a response to the plaintiffs' writ seeking attachment should likewise be deferred pending resolution of the motions to dismiss.

Under Rule 72(a) of the Federal Rules of Civil Procedure, any party has ten (10) days from entry of this Order in which to file any written objections to this Order, with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed to this Order in which to file any responses to said objections. Failure to file specific objections within ten (10) days of receipt of this Order can constitute a waiver of further appeal of this Order. *Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985), *reh'g denied*, 474 U.S. 1111 (1986).

It is so **ORDERED** this 14th day of May, 1996.

/s/ William J. Haynes Jr.
WILLLIAM J. HAYNES, JR.
United States Magistrate Judge

APPENDIX 26

IN THE ARIZONA COURT OF APPEALS

ROBERT S. CATZ,

Petitioner,

vs.

SUPERIOR COURT IN AND FOR THE COUNTY OF PIMA, No. ___

SUSAN R. CHALKER,

FIDELITY INVESTMENTS,

WATERHOUSE SECURITIES,

TIAA-CREF, Real Parties of Interest,

Respondents.

VERIFIED PETITION FOR SPECIAL ACTION

ROBERT S. CATZ*
211 Third Avenue North
NASHVILLE, TENNESSEE 37201
(615) 780-3594

PETITIONER IN PROPRIA PERSONA

*Member of the Bar of the
Supreme Court of Ohio

COUNTY OF DAVISON)
STATE OF TENNESSEE)

Petitioner Robert S. Catz, being first duly sworn states as follows:

INTRODUCTORY STATEMENT

1. This petition for special action seeks extraordinary and collateral relief to redress omnibus violations of petitioner's fundamental and clearly established rights arising under a single and patently frivolous proceedings below in *Chalker v. Catz*, No. D103065 (Super. Ct. Pima Cty. filed 11/4/94). Specifically, petitioner requests that this Court vacate standing orders issued below on December 1, 1994 (A.5), March 2, 1995 (A.29,37), March 14, 1995 (A.44) and February 13, 1996 (A.140) and for other necessary and proper relief. [(A. ___) refers hereafter to the Documentary Appendix filed herein].

JURISDICTION

2. This Court has original jurisdiction pursuant to Article 6, § 5(1) of the Arizona Constitution, A.R.S. § 12-2021, and Rule 8(b), Ariz.R.P. Spec. Act., 17B A.R.S. Petitioner has no plain, speedy, or adequate available remedy by direct appeal. *Green v. Superior Court*, 647 P.2d 166 (Ariz. 1982).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

3. Whether the Superior Court's judicial determinations entered on December 1, 1994, March 2, 1995, March 14, 1995 and February 13, 1996 are arbitrary, capricious, an abuse of discretion and therefore contrary to required law.

4. Whether the Superior Court proceeded in excess of jurisdiction and without legal authority.

REAL PARTIES OF INTEREST

5. Petitioner Robert S. Catz is the respondent below and since 1989 the

* * *

APPENDIX 27

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

(Filed May 2, 1996)

May 2, 1996

RE: ROBERT S. CATZ v. CHALKER; ET AL.
2 CA-SA 96-0051
Pima County Superior Court Cause No. D-103065

The following action was taken by the Court of Appeals for the State of Arizona, Division Two, Department B on May 2, 1996,

ORDERED: The Court declines to accept jurisdiction.

FURTHER ORDERED: Real Party in Interest's request for fees and costs is GRANTED upon the filing of a verified statement of cost pursuant to Ariz. R. Civ. App. P. 21(c).

Presiding Judge Espinosa, Chief Judge Druke and Judge Hathaway participated in the determination of this matter.

JOYCE A. GOLDSMITH, Clerk

APPENDIX 28

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

(Filed June 10, 1996)

June 10, 1996

RE: ROBERT S. CATZ v. CHALKER; ET AL.
2 CA-SA 96-0051

Pima County Superior Court Cause No. D-103065

Staff attorneys award Real Party in Interest's attorney fees on appeal in the amount of seven Thousand Three Hundred Sixty-Four and no/100 Dollars ($7,364.00), and grant costs on appeal in the amount of Five Hundred Forty and 10/100 Dollars ($540.10) by the Arizona Court of appeals, Division Two.

JOYCE A. GOLDSMITH, Clerk

APPENDIX 29

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION 2

ROBERT S. CATZ, Petitioner, vs. SUPERIOR COURT IN AND FOR THE COUNTY OF PIMA, SUSAN R. CHALKER, FIDELITY INVESTMENTS, WATERHOUSE SECURITIES, TIAA-CREF, Real Parties of Interest, Respondents.	)	No. 2-CA-96-SA-0051

PETITION FOR REVIEW BY THE SUPREME COURT

ROBERT S. CATZ*
211 Third Avenue North
Nashville, Tennessee 37201
(615) 780-3594

PETITIONER IN PROPRIA PERSONA

*Member of the Ohio Bar

I. SYNOPSIS OF THE DECISION OF THE COURT OF APPEALS

On May 2, 1996 the court of appeals declined to accept jurisdiction on the petition for special action.

II. ISSUE DECIDED BY THE ARIZONA COURT OF APPEALS

The court of appeals' decision declining to exercise jurisdiction of the special action is attached to this petition of review.

III. ISSUES PRESENTED TO THE COURT OF APPEALS BUT NOT DECIDED

Petitioner presented to the court of appeals the following issues of constitutional law that were neither considered nor decided which petitioner presents to this Court for review:

> A. Whether Arizona's statutory scheme, A.R.S. §§ 25-315D and 25-315F which authorizes in dissolution proceedings, the pre-judgment seizure of property without prompt notice and opportunity for some kind of "expeditious" post-seizure hearing and without requiring security to protect individuals against wrongful attachment affected by sequestration to be served with notice by legal process, are unconstitutional under *Connecticut v. Doehr*, 501 U.S. 1 (1991), *State v. B Bar Enterprises*, 133 Ariz.99, 649 P.2d 978 (1982) and *Mullane v. Hanover Central Bank and Trust*, 339 U.S.306 (1950).
>
> B. Whether a December 1, 1994 temporary restraining order without notice issued under color of A.R.S. §§ 25-315D and 25-315F which merged into a final judgment by default entered by the Superior Court of Pima County on March 13, 1995 some 114 days after the initial seizure, resulting in the permanent taking of property without any opportunity for some kind of

immediate, prompt and expeditions post-seizure notice and hearing are void for want of due process for combined procedural and constitutional irregularities under *Cravins, Dargen & Co. v. Superior Court,* 153 Ariz.474, 737 P.2d 1373 (1987) and *Phoenix Metals, Inc. v. Roth,* 79 Ariz.106, 284 P.2d 645 (1954).

IV. FACTS MATERIAL TO CONSIDERATION OF THE ISSUES PRESENTED TO THE SUPREME COURT IN SUPPORT OF THE PETITION FOR REVIEW

The verified petition for special action filed on April 1, 1996 with the Arizona Court of Appeals in *Catz v. Chalker,* No. 2 CA-SA

APPENDIX 30

Supreme Court

STATE OF ARIZONA

402 ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON
PHOENIX, ARIZONA 85007-3329

TELEPHONE: (602) 542-9396

NOEL K. DESSAINT
CLERK OF COURT

KATHLEEN E. KEMPLEY
CHIEF DEPUTY CLERK

October 25, 1996

RE: ROBERT S. CATZ vs.
COMM. JOSEPH MCDONALD-PIMA CO SUP CT/ SUSAN R. CHALKER et al
Supreme Court No. CV-96-0358-PR
Court of Appeals No. 2 CA-SA 96-0051
Pima County No. D-103065

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on October 25, 1996, in regard to the above-referenced cause:

ORDERED: Petitioner's Motion for Leave to File Supplement to Appendix in Support of Petition for Review = GRANTED.

FURTHER ORDERED: Petition for Review by the Supreme Court = DENIED.

FURTHER ORDERED: Request for Sanctions [Real Party in Interest Susan R. Chalker] = DENIED.

FURTHER ORDERED: Request for Attorneys' Fees [Real Party in Interest Susan R. Chalker] = GRANTED.

FURTHER ORDERED: Request for Attorneys' Fees [Real Party in Interest TIAA-CREF] = GRANTED.

A panel composed of Chief Justice Feldman, Vice Chief Justice Zlaket, and Justice Jones participated in the determination of this matter.

Record returned to Court of Appeals, Division Two, Tucson, this 25th day of October, 1996.

NOEL K. DESSAINT, Clerk

TO:

Robert S. Catz

Annette M. Everlove, Esq., Butler & Stein PC

Leonard Karp, Esq. and Laura C. Belleau, Esq., Karp Heurliln & Weiss PLC

Tom Slutes, Esq., Slutes Sakrison Grant Hill & Rubin PC

Michael J. Rusing, Esq., Rusing & Lopez PLLC

Joyce A. Goldsmith, Clerk, Court of Appeals, Division Two Lexis-Nexis

West Publishing Company

dk

APPENDIX 31

SUPREME COURT OF ARIZONA

ROBERT S. CATZ, Petitioner, v. HON. JOSEPH McDONALD, COURT COMMISSIONER OF THE STATE OF ARIZONA, in and for the County of Pima, Respondent Commissioner, and SUSAN R. CHALKER; FIDELITY INVESTMENTS; WATERHOUSE SECURITIES; TIAA-CREF, Real Parties in Interest.	Supreme Court No. CV-96-0358-PR Court of Appeals No. 2 CA-SA 96-0051 Pima County No. D-103065 **ORDER** (Filed Dec. 10, 1996)

"Real Party in Interest Susan Chalker's Affidavit in Support of Award of Attorneys' Fees and Out of Pocket Expenses" was filed, and no objection was received from Petitioner Robert Catz. The Clerk of the Court, having been authorized by the Supreme Court to enter orders granting costs and/or attorney fees when no objection is filed,

IT IS ORDERED granting Real Party in Interest Susan Chalker, attorney's fees in the amount of Seven Thousand Two Hundred Forty Six Dollars and Fifty Cents ($7,246.50), and out of pocket expenses in the amount of Fifty Seven Dollars and Fifty Cents ($57.50).

DATED this 10th day of December, 1996.

/s/ Noel K. Dessaint
NOEL K. DESSAINT
Clerk of the Court

Supreme Court, U.S.
FILED
MAR 27 1997
OFFICE OF THE CLERK

No. 96-1354

In The

Supreme Court of the United States

October Term, 1996

ROBERT S. CATZ,

Petitioner,

v.

TRIAL COMMISSIONER JOSEPH R. McDONALD, DOMESTIC RELATIONS DIVISION OF THE SUPERIOR COURT IN AND FOR THE COUNTY OF PIMA, ARIZONA, SUSAN R. CHALKER (Real Party of Interest), FIDELITY INVESTMENTS, TEACHERS INSURANCE ANNUITY ASSOCIATION-COLLEGE RETIREMENT EQUITY FUND, AND WATERHOUSE SECURITIES, INC.,

Respondents.

On Petition For Writ Of Certiorari To The Arizona Court Of Appeals, Division Two

RESPONDENT TEACHERS INSURANCE ANNUITY ASSOCIATION-COLLEGE RETIREMENT EQUITY FUND'S BRIEF IN OPPOSITION

MICHAEL J. RUSING
Counsel for Respondent TIAA-CREF
RUSING & LOPEZ, P.L.L.C.
6262 North Swan Road,
Second Floor
Tucson, Arizona 85718
(520)792-4800

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

LIST OF INTERESTED PARTIES

The petitioner is Robert S. Catz.

The respondents are correctly identified in the caption. Michael J. Rusing is counsel for respondent Teachers Insurance Annuity Association-College Retirement Equity Fund. There are no other interested parties.

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Appendix 5 – Notice of Entry of Dismissal, *Chalker v. Catz*, No. D-103065 (Superior Court, Pima County, Arizona, filed February 9, 1996).....App. 43

Appendix 6 – Order, *Chalker v. Catz*, No. D-103065 (Superior Court, Pima County, Arizona, filed February 13, 1996).....App. 47

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RESPONDENT'S TEACHERS INSURANCE ANNUITY ASSOCIATION-COLLEGE RETIREMENT EQUITIES FUND'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent Teachers Insurance Annuity Association-College Retirement Equities Fund respectfully requests that the Court deny the Petition for Writ of Certiorari seeking review of an opinion of the Arizona Court of Appeals, Division Two, entered on May 2, 1996.[1]

STATEMENT OF JURISDICTION

This Court cannot properly exercise jurisdiction over this case pursuant to 28 U.S.C. § 1257(a). Many of the questions presented for review in the Petition were never presented to the Arizona Courts. These newly made arguments may not properly be considered for the first time in this forum. Furthermore, Petitioner Catz failed to properly pursue existing remedies in the Arizona State Courts, both at the trial level in the Pima County Superior Court, and at the Appellate Courts. Amongst other things, the Petitioner never took steps to obtain appropriate appellate review pursuant to applicable Arizona Procedure.

STATEMENT OF THE CASE

Respondent Teachers Insurance Annuity Association-College Retirement Equities Fund ("TIAA-CREF")

[1] On October 25, 1996 the Arizona Supreme Court denied Petitioner's Petition for Review.

respectfully opposes the Petition for Writ of Certiorari because:

A. The Petition assails the Arizona judiciary for making holdings never in fact made, on issues never in fact presented to the Arizona Courts; and

B. Petitioner never effectively sought appellate review of the decisions of the trial court of which he complains.

TIAA-CREF is a large administrator of retirement funds for the education profession. Petitioner was apparently an educator who had significant investments held by TIAA-CREF. By way of background, this specific Respondent, TIAA-CREF, was not a party to the litigation when most of the matters complained of by Petitioner occurred. Specifically, TIAA-CREF's involvement in the litigation did not occur until *after* Pima County Superior Court entered the Decree of Dissolution on March 14, 1995. *See* Decree attached to Petition for Review as Appendix 9. The Decree of Dissolution of marriage provides, in relevant part, that:

> "6. Petitioner (Susan R. Chalker) is awarded as her sole and separate property all right, title and interest in and to the following investments, bank and/or retirement accounts:
>
> * * *
>
> G. CREF Retirement Annuity, certificate number Q866023-8, Global Equities Account (approximate value $10,116.71);

H. CREF Supplemental Retirement Annuities, certificate number J091114-7, Global Equities Account (approximate value $424,055.24).

I. TIAA Transfer Payout Annuity, contract number IE42653-2 (approximate value $36,654.54); . . . "

The Decree of Dissolution further indicated that, with regard to items G, H and I referenced above, " . . . all right, title and interest shall be transferred to Petitioner by a Qualified Domestic Relations Order." It also states that "The Court retains jurisdiction to enter such other QDRO's or other orders as are necessary to assure transfer to Petitioner of the property awarded to her hereunder." No Notice of Appeal was ever filed by Petitioner as to that Petition for Dissolution, nor did Petitioner file any motion to extend the time for such an appeal, if his "Rule 59-60" motions were in fact rejected as contended by Petitioner. A QDRO was entered by the Pima County Superior Court on July 28, 1995 ordering TIAA-CREF to transfer the above referenced accounts to Respondent Susan R. Chalker ("Chalker"). *See* QDRO attached hereto as Appendix 1.

Thereafter, on August 28, 1995, Chalker filed a Petition for Order to Show Cause to enforce those above referenced provisions of the Decree of Dissolution, and specifically requested from the Court an Order requiring TIAA-CREF to transfer the three retirement accounts to Chalker. The relevant pleadings are attached hereto as Appendix 2. On October 16, 1995, TIAA-CREF appeared in the litigation for the first time, and asked the Court to provide the additional time allowed under ERISA for

making a determination on such matters. *See* TIAA-CREF's Response to Petition for Order to Show Cause attached hereto as Appendix 3. Specifically, 26 U.S.C. § 414(p) allows a qualified plan such as TIAA-CREF an eighteen month period to analyze whether or not a valid QDRO has been issued which applies to the plan. The basis for TIAA-CREF's concern and the need for additional time was the fact that Petitioner had initiated attacks on the efficacy of the QDRO in at least two different federal courts. Subsequent to the Decree of Dissolution being entered on or about March 15, 1995, and prior to the entry of the QDRO on July 20, 1995, TIAA-CREF was named as a defendant in a lawsuit filed by Catz in the United States District Court for the Northern District of Ohio, Eastern Division, seeking to set aside the provisions of the Decree entered in the Arizona dissolution proceeding. *See* Complaint for Injunctive and Declaratory Relief attached to Appendix 3 as Exhibit A. In addition, TIAA-CREF was served with a copy of a Complaint naming TIAA-CREF as a defendant in the U. S. District Court for the Middle District of Tennessee. It was filed by Petitioner and again sought to set aside the Decree of Dissolution entered in Arizona upon which the QDRO was based. *See* Complaint and cover letter attached to Appendix 3 as Exhibit B. As can be seen from the cover letter, TIAA-CREF was advised that if title to the accounts in its possession was transferred to Respondent Chalker, TIAA-CREF would be sued for money damages. Having been placed in the proverbial spot between a rock and a hard place, TIAA-CREF felt that it must carefully evaluate its legal position to insure that no

precipitous actions were taken that could impact the rights of any other parties involved.

In any event, a hearing on the Order to Show Cause was set for October 20, 1995 in the Pima County Superior Courts. Chalker's Motion and TIAA-CREF's Opposition thereto all indicate that they were served upon Petitioner. Petitioner has never claimed otherwise, or that he was unaware of the scheduled hearing. Hearing was held as scheduled on October 20, 1995 and the matter was taken under advisement. *See* Minute Entry attached hereto as Appendix 4.

When the Tennessee Federal District Court action was dismissed on February 6, 1996, that fact was communicated to the Pima County Superior Court. *See* Respondent Chalker's Notice attached hereto as Appendix 5. Thereafter, the Pima County Superior Court entered an under advisement Order on October 16, 1995 ordering TIAA-CREF to transfer the aforementioned accounts to Chalker. *See* Order attached hereto as Appendix 6. A copy of that ruling was also sent to Petitioner, and he has never denied receiving it. This order constitutes a "special order made after final judgment" subject to immediate appeal under A.R.S. § 12-2101(C). Once again, 30 days passed after that Order was entered and no notice of appeal was filed. Once the time for appeal had expired, the transfer of assets compelled by the Pima County Superior Court in its order of February 13, 1996 was effectuated by TIAA-CREF. *See* document dated March 20, 1996 attached hereto as Appendix 7.

REASONS FOR DENYING THE WRIT

I.

THIS COURT HAS NO JURISDICTION TO CONSIDER PETITIONER'S ARGUMENTS.

This Court wisely refuses to review judgments rendered by the highest court of a state unless a federal question has been both raised and decided in the state court below. *Yee v. City of Escondido*, 503 U.S. 519, 523-33 (1992). (In reviewing judgments of state courts under 28 U.S.C. § 1257, the court will refuse to consider claims that were not raised or addressed below.) *See also Beck v. Washington*, 369 U.S. 541, 549-553 (1962) (because Petitioner failed to argue equal protection in state court, the question was not before this court); and *Herndon v. Georgia*, 295 U.S. 441, 443 (1935) (failure to follow appellate channels provided by state court is fatal).

The thrust of Petitioner's "federal questions" focuses on matters that occurred leading up to and perhaps resulting in the Decree of Dissolution entered on March 14, 1995. Petitioner was, however, unable to ever effectuate getting such issues heard by the Pima County Superior Court, and therefore these arguments have never been considered. In addition, these matters were never ruled upon by the Arizona Appellate Courts, because Petitioner failed to comply with Arizona procedural rules regarding appellate review of the rulings complained of.

Specifically, with regard to the entry of the Decree of Dissolution, that is an appealable order pursuant to A.R.S. § 12-2101, a fact which is undisputed by Petitioner. That being the case, since the Decree of Dissolution was

entered on March 14, 1995, the time for appeal would have run 30 days thereafter pursuant to Rule 9(a) of the Arizona Rules of Civil Appellate Procedure. Because no Notice of Appeal was filed, Catz forfeited his opportunity to obtain appellate relief. Although Catz claims that he filed a timely "Rule 59/60" motion with the trial courts which would have extended the time for appeal, and that such was returned to him for failure to comply with procedural requirements, such an argument is unavailing and unpersuasive for several reasons. For example, if the motion was indeed sent back for failure to comply with procedural rules, Petitioner, even as a pro se litigant, but especially as an attorney pro se litigant, has an obligation to know and understand such procedural rules. In addition, Petitioner made no attempt at the trial court level to resolve that timeliness issue, and there were numerous avenues available to him including: 1) filing a motion with the trial court to have the Rule 59/60 motion deemed filed when they were initially received by the Clerk of the Superior Court; or 2) filing a motion to set aside and reenter the Decree of Dissolution so that the time for appeal could be reestablished and a timely appeal perfected. Furthermore, if the Superior Court had been incorrect in rejecting the papers, Petitioner could have filed either a motion in Superior Court or sought appellate relief by way of special action to compel acceptance of the papers. By failing to do any of these things, Petitioner is stuck with the operation of the rules relating to effectuating appeals.

In fact, instead of taking any of these steps, Petitioner filed a Petition for Special Action to the Arizona Court of Appeals on March 31, 1996, more than a *year* after the

Decree for Dissolution was entered, and more than 11 months after the time for filing of a Notice of Appeal had expired. In Arizona, it is well established that a Special Action may not be taken to review an appealable order after the appeal time has run. *See State Ex Rel Neely v. Rodriguez*, 165 Ariz. 74, 77, 796 P.2d 876, 879 (1990). The Arizona Court of Appeals therefore lacked jurisdiction to entertain the Special Action, and properly came to that conclusion in declining such in its order of May 2, 1996.

The same is true of the only other order entered by the Pima County Superior Court that has any applicability to TIAA-CREF. Specifically, that is the Order of February 13, 1996 requiring TIAA-CREF to immediately transfer Petitioner's TIAA-CREF accounts and/or annuities to Susan Ruth Chalker. As previously indicated, that Order indicates it was mailed to Petitioner on February 13, 1996, and Petitioner does not deny receiving it. As a "special order made after final judgment" it is subject to immediate appeal under A.R.S. § 12-2101(C). Once again, 30 days passed after that Order was entered and no Notice of Appeal was filed. Accordingly, the Arizona Court of Appeals also lacked jurisdiction over the Special Action insofar as it related to that Order.

Thus, Petitioner did not obtain appellate review of orders complained of due to his failure to comply with established procedures and timelines. This failure to follow appellate channels provided by the Arizona state court system is fatal to Petitioner's Petition for Review. *Herndon v. Georgia*, 295 U.S. 441, 443 (1935).

Being a somewhat collateral party in this litigation, and essentially just a stake holder of contested assets,

TIAA-CREF lacks substantial knowledge, information or position with regard to the bulk of Petitioner's "facts" or arguments. It does not, however, appear that Petitioner is challenging the notice or appropriateness of the hearing on October 16, 1995, which resulted in the Order of February 13, 1996 requiring the transfer of the assets held by TIAA-CREF to Susan Ruth Chalker.

It should also be pointed out that with regard to TIAA-CREF, the transfer of assets compelled by the Pima County Superior Court in its Order of February 13, 1996 has occurred. *See* document dated March 20, 1996 attached hereto as Appendix 7. The transfer was effectuated by TIAA-CREF after the time for appealing the Order ordering such had expired. In any event, since the assets have been transferred, the doctrine of mootness would preclude any relief requested as to TIAA-CREF involving such assets. *See Miceli v. Industrial Commission*, 135 Ariz. 71, 659 P.2d 30 (1983).

Finally, it must also be noted that under Arizona's appellate review scheme, although there is no specific time limit for seeking special action review, special actions are governed by a laches standard. *See State Ex Rel Neely v. Rodriguez, supra.* Certainly the Arizona Court of Appeals could properly have concluded that seeking appellate relief from an appealable order more than a year after it was entered was well beyond the laches line.

II.

THE MAIN THRUST OF PETITIONER'S ARGUMENT IS BOTH SPURIOUS AND NOT OUTCOME DETERMINATIVE.

The Petition for Special Action that was presented to the Arizona appellate courts was largely indecipherable gibberish including such charges as "omnibus violations of Petitioner's fundamental rights." The Petition for Writ of Certiorari is slightly more focused and seems to be largely based upon the constitutionality of Arizona's practice of issuing temporary injunctions in divorce proceedings to prevent wasting, secreting, or otherwise mishandling the assets of the marital community pending the dissolution. There is a methodology in the statute itself for relief from such orders where appropriate, so clearly a participant in a dissolution proceeding has due process rights to a hearing to determine as to any given circumstance whether or not the injunction applies, whether an exception can be granted, or whether it should be dissolved. Certainly this satisfies procedural and substantive due process. Once again, what occurred here involves Petitioner's failure to effectively pursue and obtain a hearing on the issues. Indeed, had Petitioner been represented by counsel in Arizona, what we would be talking about would be a standard of care malpractice issue and not a procedural due process one. In short, it is obvious that Petitioner was more interested in pursuing wholly unfounded and spurious collateral proceedings in federal courts throughout the land than in obtaining a hearing on his issues in Arizona State Courts. In short, he was being too cute by half.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted this 27th day of March, 1997.

MICHAEL J. RUSING
RUSING & LOPEZ, P.L.L.C.
6262 N. Swan Rd., 2nd Floor
Tucson, AZ 85718
Attorneys for Respondent Teachers Insurance Annuity Association-College Retirement Equities Fund

APPENDIX 1

Annette Everlove, Esq.
BUTLER & STEIN, P.C.
110 South Church Ave.
Suite 9300
Tucson, Arizona 85701
(602) 628-1618
Pima County Computer No. 17238

and

Leonard Karp, Esq.
KARP & WEISS, P.C.
33 N. Stone Ave.
Suite 2120
Tucson, Arizona 85701
(602) 882-9705
Pima County Computer No. 30244

Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

In re the Marriage of:	NO. D-103065
SUSAN RUTH CHALKER, Petitioner,	**QUALIFIED DOMESTIC RELATIONS ORDER**
and	
ROBERT STEVEN CATZ, Respondent, Additional Parties.	Assigned to: Judge McDonald
	(Filed Jul. 28, 1995)

1. This Court intends this order to be a Qualified Domestic Relations Order within the meaning of Section 414(p) of the Internal Revenue Code of 1986 ("Code").

2. Susan Ruth Chalker ("Chalker") and Robert Steven Catz ("Catz") were divorced pursuant to Decree of Dissolution of Marriage entered by this Court on March 14, 1995.

3. CATZ (Social Security Number 560-58-1390) is a participant in the Teachers Insurance and Annuity Association – College Retirement Equities Fund, hereinafter "TIAA-CREF", having the following Retirement Annuities:

A. CREF Retirement Annuity, certificate number Q866023-8, Global Equities Account;

B. CREF Supplemental Requirement Annuities, certificate number J091114-7, Global Equities Account;

C. TIAA Transfer Payout Annuity, contract number IE42653-2;

4. Catz' current and last known mailing address is:

Mr. Robert S. Catz
c/o Shawn D Catz
1402 – 17th Ave. #B
Nashville, TN 37212

5. Chalker's current and last known mailing address:

Susan Ruth Chalker
6374 N. Vuelta Tajo
Tucson, Arizona 85718

6. To accommodate the distribution of community property as ordered by this Court,

IT IS ORDERED, ADJUDICATED AND DECREED AS FOLLOWS:

A. That the TIAA-CREF annuities previously referenced are marital property;

B. That subject to the terms of said annuities, the following portions shall be awarded to Chalker as her sole separate, and exclusive property to be applied to TIAA-CREF annuities subject to the terms and limitations of said annuities:

The current values of:

. . .

100% of the accumulation under TIAA Transfer Payout Annuity, Contract No IE42653-2;

100% of the accumulation under CREF Retirement Annuity, certificate number Q866023-8, Global Equities Account; and

100% of the accumulation under CREF Supplemental Requirement Annuities, certificate no. J091114-7, Global Equities Account

The current values will reflect interim interest and dividend earnings in TIAA and investment experience in CREF until the transfer is recorded by TIAA-CREF. All ownership rights in the newly issued annuities will belong to SUSAN R. CHALKER.

This Order:

A. does not require any Plan to provide any type of form of benefit, or any option, not otherwise provided under the Plan, and

B. does not require TIAA-CREF to provide increased benefits; and

C. does not require the payment of benefits to an Alternate Payee which are required to be paid to another Alternate Payee under another Order previously determined to be a Qualified Domestic Relations Order.

8. This Court reserves jurisdiction to issue further orders as needed to execute this order.

DONE this 28 day of July, 1995.

/s/ Joseph R. McDonald
Honorable Joseph R. McDonald
Pima County Superior Court

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument is a full, true, and correct copy of the original on file in this office.

Attested 7-28 1995
JAMES N. CORBETT, Clerk

By /s/ Teresa R. Maylu Deputy

APPENDIX 2

ARIZONA SUPERIOR COURT, PIMA COUNTY

In re the Marriage of:	)	No. D-103065
SUSAN RUTH CHALKER	)	
Petitioner,	)	REQUEST FOR ORDER TO SHOW CAUSE HEARING DATE
and	)	
ROBERT STEVEN CATZ	)	
Respondent.	)	

It is hereby requested that the Order to Show Cause filed with the Clerk of Court contemporaneously herewith be set for hearing.

1. Type of Order to Show Cause:

   [ ] Pre-Judgment
   [X] Post-Judgment
   [ ] Provisional Remedy
   [ ] Supplemental Proceedings
   [ ] Other _____

2. Previous matters were heard by Judge/Commissioner Judge McDonald.

3. Estimated time for the ENTIRE hearing: **1 hour**

4. Court Reporter required [X] Yes [ ] No

5. Relief sought:

   [ ]Contempt
   [ ]Injunction
   [ ]Special Action

[ ]Appoint Receiver
[ ]Wage Assignment
[ ]Temporary Restraining Order
[ ]Modification
( )Decree, Support, etc.
( )Child Custody
[ ]Possession
[X] Other: **Turnover of Funds**

6. The opposing party is represented by Unknown.

[X] I hereby consent to the Order to Show Cause being heard by a Commissioner.

Annette Everlove, Esq.
BUTLER & STEIN, P.C.
110 S. Church Ave.
Suite 9300
Tucson, Arizona 85701
(602) 628-1618
PCC: 17238

Date: August 28, 1995

/s/ Annette Everlove
Attorney for Petitioner

Annette Everlove, Esq.
BUTLER & STEIN, P.C.
110 South Church Ave.
Suite 9300
Tucson, Arizona 85701
(520) 628-1618
Pima County Computer No. 17238

and

Leonard Karp, Esq.
KARP & WEISS, P.C.
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Suite 2120
Tucson, Arizona 85701
(520) 882-9705
Pima County Computer No. 30244

Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

In re the Marriage of: SUSAN RUTH CHALKER, Petitioner, and ROBERT STEVEN CATZ; Respondent,	NO. D-103065 **PETITION FOR ORDER TO SHOW CAUSE** (Post-Decree)
WATERHOUSE SECURITIES, INC., a New York corporation; FIDELITY INVESTMENT TRUST, a registered security in the State of Arizona; FIDELITY SOUTHEAST ASIA FUND, a registered security in the State of Arizona; FIDELITY INVESTMENT TRUST FIDELITY LATIN AMERICA FUND, a registered security in the State of Arizona; TEACHERS INSURANCE AND ANNUITY ASSOCIATION/COLLEGE RETIREMENT EQUITIES FUND, a registered insurance/pension and/or annuity fund in the State of Arizona, Additional Parties.	Length of Hearing: 1 hour Assigned to: Judge McDonald

Petitioner, SUSAN RUTH CHALKER, by and through her undersigned counsel, for her Petition for Order to Show Cause, states as follows:

1. TIAA/CREF is an additional party to these proceedings pursuant to A.R.S. § 25-315.

2. A Decree of Dissolution of Marriage was entered by this Court on March 14, 1995.

3. Pursuant to said Decree of Dissolution of Marriage, Petitioner was awarded, *inter alia*, as her sole and separate property, all right, title and interest in and to the following TIAA/CREF accounts:

A. CREF Retirement Annuity, certificate number Q866023-8, Global Equities Account;

B. CREF Supplemental Requirement Annuities, certificate no. J091114-7, Global Equities Account;

C. TIAA Transfer Payout Annuity, contract no. IE42653-2.

3. Pursuant to said Decree of Dissolution of Marriage, a Qualified Domestic Relations Order was entered by this Court on July 28, 1995 awarding to Petitioner as her sole, separate and exclusive property the above-referenced TIAA-CREF accounts.

4. TIAA/CREF was provided with copies of the Decree of Dissolution of Marriage and Qualified Domestic Relations Order on or about March 15, 1995 and July 28, 1995 and yet to date, and despite demand, has failed and refused and continues to fail and refuse to transfer the above-referenced TIAA-CREF accounts to Petitioner.

WHEREFORE, Petitioner requests that this Court issue its order requiring TIAA/CREF to appear and show cause, if any it has, why this Court should not:

A. Order the immediate transfer of the above-referenced TIAA/CREF accounts to Petitioner;

B. Award to Petitioner her attorneys' fees and costs incurring in bringing the instant Petition for Order to Show Cause; and

C. For such other relief as the Court deems proper.

DATED this 28th day of August, 1995.

BUTLER & STEIN, P.C.

/s/ Annette Everlove
Annette Everlove
Attorneys for Petitioner

COPY of the foregoing
mailed this 29th day of
August, 1995 to:

TIAA/CREF
ATTN: John Curran, Esq.
730 Third Avenue
New York, New York 10017-3206
Additional Party

Mr. Robert S. Catz
c/o Shawn D Catz
1402 – 17th Ave. #B
Nashville, TN 37212
Respondent

STATE OF ARIZONA)
) ss:
County of Pima)

ANNETTE EVERLOVE, being first duly sworn upon her oath deposes and says:

1. That she is co-counsel for the Petitioner in the above-entitled action;

2. That as such, she is familiar with the facts in this action;

3. That she has read the foregoing Petition for Order to Show Cause and knows the contents thereof;

4. That the contents of the Petition are true to the best of her knowledge, except as to those items stated on information and belief, and as to those she believes them to be true.

/s/ Annette Everlove
ANNETTE EVERLOVE

SUBSCRIBED AND SWORN to before me this 28th day of August, 1995 by ANNETTE EVERLOVE.

(Seal)

/s/ Susan M. Holsten
Notary Public

My Commission Expires:
9-29-98

(Seal) *OFFICIAL SEAL*
SUSAN M. HOLSTEN
NOTARY PUBLIC – ARIZONA
PIMA COUNTY
My Comm. Expires Sept. 29, 1998

Annette Everlove, Esq.
BUTLER & STEIN, P.C.
110 South Church Ave.
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Tucson, Arizona 85701
(520) 628-1618
Pima County Computer No. 17238

and

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KARP & WEISS, P.C.
33 N. Stone Ave.
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(520) 882-9705
Pima County Computer No. 30244

Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF PIMA

In re the Marriage of:	)
SUSAN RUTH CHALKER,	)
Petitioner,	) NO. D-103065
and	) ORDER TO
ROBERT STEVEN CATZ;	) SHOW CAUSE
Respondent,	)

WATERHOUSE SECURITIES, INC., a New York corporation; FIDELITY INVESTMENT TRUST, a registered security in the State of Arizona; FIDELITY SOUTHEAST ASIA FUND, a registered security in the State of Arizona; FIDELITY INVESTMENT TRUST FIDELITY LATIN AMERICA FUND, a registered security in the State of Arizona; TEACHERS INSURANCE AND ANNUITY ASSOCIATION/COLLEGE RETIREMENT EQUITIES FUND, a registered insurance/pension and/or annuity fund in the State of Arizona, Additional Parties.	Length of Hearing: 1 hour Assigned to: Judge McDonald

Petitioner, having filed her Petition for Order to Show Cause for Temporary Orders, and good cause appearing,

IT IS ORDERED that Additional Party TEACHERS INSURANCE AND ANNUITY ASSOCIATION/COLLEGE RETIREMENT EQUITIES FUND (TIAA/CREF) appear before this Court at 110 West Congress, Tucson, Arizona, on the 16 day of Oct. 1995, at the hour of 2:30 o'clock p.m., and show cause, if any they have, why the Court should not:

A. Order the immediate transfer of the above-referenced TIAA/CREF accounts to Petitioner;

B. Award to Petitioner her attorneys' fees and costs incurring in bringing the instant Petition for Order to Show Cause; and

C. For such other relief as the Court deems proper.

DONE IN OPEN COURT this 29 day of Aug 1995.

/s/ _____
Honorable Joseph R. McDonald
Pima County Superior Court

APPENDIX 3

RUSING & LOPEZ, P.L.L.C.
6262 North Swan Road, Second Floor
Tucson, Arizona 85718
Telephone: (520) 792-4800

Michael J. Rusing
PCC #50020
Attorneys for Teachers Insurance and Annuity Association/College Retirement Equities Fund

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF PIMA

In re the Marriage of: SUSAN RUTH CHALKER, Petitioner, and ROBERT STEVEN CATZ, Respondent.	NO. D-103065 RESPONSE TO PETITION FOR ORDER TO SHOW CAUSE (Assigned to Commissioner Joseph R. McDonald)
WATERHOUSE SECURITIES, INC., a New York corporation; FIDELITY INVESTMENT TRUST, a registered security in the State of Arizona; FIDELITY SOUTHEAST ASIA FUND, a registered security in the State of Arizona; FIDELITY INVESTMENT TRUST FIDELITY LATIN AMERICA FUND, a registered security in the State of	

Arizona; TEACHERS INSURANCE AND ANNUITY ASSOCIATION/ COLLEGE RETIREMENT EQUITIES FUND, a registered insurance/ pension and/or annuity fund in the State of Arizona,	)
Additional Parties.	)

Teachers Insurance and Annuity Association/College Retirement Equities Fund ("TIAA/CREF") hereby submits the following response to the Petitioner's Petition for Order to Show Cause filed in this matter. This Response is based on the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner has obtained a Qualified Domestic Relations Order ("QDRO") pursuant to a Decree of Dissolution of Marriage entered in this matter, which awards 100% of Robert S. Catz's ("Catz") retirement annuity contract accumulations with TIAA/CREF. This is apparently the second divorce for this couple, the first being set aside in the current proceeding.

Catz, however, has initiated attacks on the efficacy of the QDRO. Subsequent to the Decree of Dissolution entered on or about March 15, 1995 and prior to the QDRO being entered on July 20, 1995, TIAA/CREF was named as a Defendant in a lawsuit filed by Catz in the United States District Court for the Northern District of Ohio, Eastern Division, seeking to set aside the provisions of the Decree entered in this action. *See* Complaint

for Injunctive and Declaratory Relief attached hereto as Exhibit A.

Most recently, TIAA/CREF was served with a copy of the Complaint naming it as a Defendant in the U.S. District Court for the Middle District of Tennessee. It was filed by Catz and again seeks to set aside the Decree of Dissolution in the current action upon which the purported QDRO is based. *See* Complaint and cover letter attached hereto as Exhibit B. As can be seen from the cover letter, TIAA/CREF is advised that if title to the accounts in its possession is transferred to Petitioner herein, it will be sued for money damages. Having been placed in the proverbial spot between a rock and a hard place, TIAA/CREF must carefully evaluate its legal position to insure that no precipitous actions are taken that could impact the rights of any of the parties involved.

Under ERISA, and specifically 26 U.S.C. §414(p), a copy of which is attached hereto for the Court's convenience, a qualified plan such as TIAA/CREF is allowed an eighteen month period to analyze whether or not a valid QDRO has been issued which applies to the plan. In the interim period, the Act provides that the plan shall segregate the accounts subject to the QDRO. In the instant case, that is not a problem since the QDRO at issue covers Catz's entire annuity contract accumulations in existence at the time.

Thus, the relief requested in the Order to Show Cause is contrary to specific ERISA legislation on the subject insofar as it would require TIAA/CREF to honor the QDRO and disseminate funds [prior to the expiration of the eighteen month period]. Thus, rather than being forced to move precipitously and jeopardize the rights of

either party to the contract accumulations until such time as the participant's claims are fully adjudicated, or it is determined that they are without merit, TIAA/CREF requires sufficient time to resolve this matter. Since the QDRO submitted by Petitioner was issued just this past July, TIAA/CREF still has a substantial amount remaining of this eighteen month period during which a final determination can be reached as to the QDRO's qualifications.

Dated this 16th day of October, 1995.

RUSING & LOPEZ, P.L.L.C.

By /s/ MJR
Michael J. Rusing
Attorneys for Teachers Insurance and Annuity Association/College Retirement Equities Fund

Served by mail this 16th day of October, 1995, upon:

Annette Everlove, Esq.
BUTLER & STEIN, P.C.
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Tucson, AZ 85701
Attorneys for Petitioner

Leonard Karp, Esq.
KARP & WEISS, P.C.
33 No. Stone Ave., Ste. 2120
Tucson, AZ 85701
Attorneys for Petitioner

Robert S. Catz
c/o Shawn D. Catz
1402 Seventeenth Ave., #B
Nashville, TN 37212
Respondent

/s/ Pat Greenwood

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT S. CATZ,
1402 17th Avenue South #B
Nashville, TN 37212,

PLAINTIFF,

vs.

SUSAN R. CHALKER,
6274 Vuelta Tajo
Tucson, AZ 85718

FIDELITY INVESTMENTS,
164 North Northern Avenue
Boston, MA 02210

WATERHOUSE SECURITIES,
100 Wall Street
New York, NY 10005

TEACHERS INSURANCE
ANNUITY ASSOCIATION/
COLLEGE RETIREMENT
EQUITY FUND,
730 Third Avenue
New York, NY 10017

OHIO STATE TEACHERS
RETIREMENT SYSTEM
275 Broad Street
Columbus, OH 43215

DEFENDANTS.

CA No.
1:95CV 1652

JUDGE
MANOS

MAG. JUDGE
HEMANN

(Filed
Jul. 27, 1995)

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

I. INTRODUCTORY STATEMENT

1. This action arises under 28 U.S.C. §1738 seeking final injunctive and declaratory relief as to which of two final and conflicting state court judgments is entitled to full faith and credit under Article IV §1 of the United States Constitution.

II. JURISDICTION

2. This Court has subject matter jurisdiction under 28 U.S.C. §1332 as there is complete diversity of citizenship between the parties and the amount in controversy exceeds $50,000 exclusive of interests and costs.

III. PARTIES

3. The plaintiff Robert S. Catz is an adult resident of the State of Tennessee.

4. The defendant Susan R. Chalker is an adult resident of the State of Arizona.

5. The defendant Fidelity Investments of Massachusetts is a financial services company authorized to sell securities and other investment instruments in the State of Ohio.

6. The defendant Waterhouse Securities of New York is a financial services company authorized to sell securities and other investment instruments in the State of Ohio.

7. The defendant Teachers Insurance Annuity Association/College Retirement Equity Fund of New York is a

financial services company authorized to sell securities and other investment instruments in the State of Ohio.

8. The defendant Ohio State Teachers Retirement System of Columbus was created by the Ohio legislature to provide retirement and other related benefits and services to Ohio's public school and state university employees.

IV. FACTUAL ALLEGATIONS

9. On April 13, 1980 the plaintiff Robert S. Catz and defendant Susan R. Chalker were married in Washington, D.C.

10. On April 10, 1989 the plaintiff Robert S. Catz and defendant Susan R. Chalker were divorced by final decree entered by the Cuyahoga County Court of Common Pleas in *Catz v. Catz*, No. D191073 a copy of said final judgment is attached hereto.

11. On November 4, 1994 defendant Chalker filed a petition for dissolution of marriage in the Pima County Superior Court, Tucson, Arizona in *Chalker v. Catz*, No. D103065 collaterally attacking the validity of the 1989 Ohio judgment.

12. On March 14, 1995 the Pima County Superior Court entered a final judgment in Chalker v. Catz granting defendant Chalker a dissolution of marriage by default judgment on grounds that the 1989 Ohio judgment was not entitled to full faith and credit under Article IV §1 of the United States Constitution as it was procured by fraud and ordered among other things the transfer of property held in the name of plaintiff Robert S. Catz on

account with defendants Fidelity Investments, Waterhouse Securities, Teachers Insurance Annuity Association/College Retirement Equity Fund and the Ohio State Teachers Retirement System to defendant Chalker a copy of which is attached hereto.

V. CLAIMS FOR RELIEF

13. The Arizona state court judgment was entered in violation of 28 U.S.C. §1738 and Article IV § of the Untied States Constitution and is therefore invalid.

14. The Arizona state court judgment was entered in violation of the due process clause of the fourteenth amendment of the United States Constitution as plaintiff Catz was denied a full and fair opportunity to present his claims before the Arizona state court in *Chalker v. Catz* and is therefore invalid.

VI. PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that the Court grant the following relief:

1. Issue a declaratory judgment that the Arizona state court judgment is invalid under 28 U.S.C. §1738, Article IV §1 and the fourteenth amendment of the United States Constitution.

2. Issue a permanent injunction enjoining defendant Chalker from initiating any further litigation collaterally attacking the Ohio judgment on grounds that said judgment is constitutionally valid and therefore entitled to complete and full preclusive effect under Ohio law as to

all issues and claims adjudicated by the Ohio court in 1989.

Respectfully submitted,

/s/ Robert S. Catz
ROBERT S. CATZ
1402 17th Avenue South # B
Nashville, Tennessee 37212
(615) 780-3594

PLAINTIFF APPEARING
PRO SE

EXHIBIT B

RAY & HOUSCH
ATTORNEYS AT LAW

CHARLES R. RAY*
PAUL T. HOUSCH
JULIE E. OFFICER

*Also Licensed in Kentucky

TWO HUNDRED ELEVEN
THIRD AVENUE NORTH
P.O. BOX 198288
NASHVILLE, TENNESSEE 37219
TELEPHONE (615) 256-2111
FAX (615) 248-6730

October 2, 1995

VIA OVERNIGHT MAIL

Mr. John Curran, Esq.
Legal Department
TIAA/CREF
730 Third Avenue
New York, NY 10017

Re: Catz v. TIAA-CREF
(M.D. Tenn., filed 10/2/95)

Dear Mr. Curran:

Enclosed please find a copy of a complaint filed this date naming TIAA-CREF as a defendant. Please be advised that your registered agent was served this date. As you know, the plaintiff, Robert S. Catz, a resident of Nashville, Tennessee, and Susan R. Chalker, a resident of Tucson, Arizona, are two adverse claimants asserting a legal right over TIAA-CREF, Account Nos. Q866023-8, J091114-7, and IE42653-2, titled in the name of the plaintiff, Robert S. Catz. Ms. Chalker makes claim of these accounts pursuant a March 14, 1995 Arizona state court judgment which is invalid under the due process clause of the Fourteenth Amendment had not entitled to full faith and credit under Article IV § 1 of the U.S. Constitution.

We strongly suggest that you file a cross-complaint in the nature of an interpleader pursuant to 28 U.S.C. § 1335 and join Ms. Chalker as a co-cross defendant, pursuant to Rule 18 of the Federal Rules of Civil Procedure. This is to put you on notice that if TIAA-CREF fails to avail itself of the remedy of interpleader in this controversy and instead chooses to transfer title of the disputed accounts to Ms. Chalker, we will amend the complaint to add a claim for damages against TIAA-CREF.

We look forward to hearing from you.

Very truly yours,

RAY & HOUSCH

/s/ Charles R. Ray
Charles R. Ray

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

SHAWN D. CATZ,
JASON A. CATZ
ROBERT S. CATZ
1402 – 17th Avenue South, No. B
Nashville, Tennessee 37212,

Plaintiffs,

vs.

SUSAN R. CHALKER,
6374 Vuelta Tajo
Tucson, Arizona 85718

FIDELITY INVESTMENTS,
164 North Northern Avenue
Boston, Massachusetts 02210

WATERHOUSE SECURITIES,
100 Wall Street
New York, NY 10005

TIAA-CREF
730 Third Avenue
New York, NY 10017

DEFENDANTS.

No. 3-95-0947

JUDGE ECHOLS

(Filed Oct. 2, 1995)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Now come the Plaintiffs and complain as follows:

I.

JURISDICTION

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, as the claims presented herein arise under the due process clause of the Fourteenth Amendment to the United States Constitution, under 28 U.S.C. § 1332, as there is complete diversity of citizenship between the parties, and the amount in controversy exceeds Fifty Thousand Dollars ($50,000), exclusive of interest and costs.

II.

THE PARTIES

2. Plaintiff, Shawn D. Catz, is an adult resident of the State of Tennessee.

3. Plaintiff, Jason A. Catz, is an adult resident of the State of Tennessee.

4. Plaintiff, Robert S. Catz, is an adult resident of the State of Tennessee.

5. Defendant, Susan R. Chalker, is an adult resident of the State of Tennessee.

6. Defendant, Fidelity Investments of the State of Massachusetts is a financial services company authorized to sell securities in the State of Tennessee.

7. Defendant, Waterhouse Securities, of the State of New York is a financial services company authorized to sell securities in the States of Tennessee.

8. Defendant, Teachers Insurance Annuity Association-College Retirement Equity Fund of the State of New York is a financial services company authorized to sell securities in the State of Tennessee.

III.

FACTUAL ALLEGATIONS

9. On April 13, 1980, Plaintiff, Robert S. Catz, and Defendant, Susan R. Chalker, were married in Washington, D.C.

10. On April 10, 1989, Plaintiff, Robert S. Catz, and Defendant, Susan R. Chalker, were divorced by final decree entered by the Cuyahoga County Court of Common Pleas, Cleveland, Ohio, in *Catz v. Catz*, No. D191073. *See*, Exhibit "A" attached hereto (Ohio divorce decree).

11. On November 4, 1994, Defendant, Susan R. Chalker, filed a petition for dissolution of marriage in the Pima County Superior Court, Tucson, Arizona in *Chalker v. Catz*, No. D103065, collaterally attacking the validity of the Ohio judgment.

12. On December 1, 1994, the Pima County Superior Court issued an *ex parte* temporary restraining order enjoining Defendant financial institutions from the payment, withdrawal, and/or disbursement of accounts in its custody and possession and titled in the name of the Plaintiffs. *See*, Exhibit "B" attached hereto (Temporary Restraining Order).

13. On March 14, 1995, the Pima County Superior Court entered a final decree and judgment in *Chalker v.*

Catz, granting Defendant Chalker a dissolution of marriage by default and invalidated the 1989 Ohio state court judgment upon a finding by the Arizona court that it was not entitled to a full faith and credit under Article IV § 1 of the United States Constitution. The Arizona decree further ordered *inter alia* the transfer of all accounts in the custody and possession of Defendant financial institutions and titled in the name of the Plaintiffs. *See*, Exhibit "C" attached hereto (Arizona divorce decree).

14. The manner in which the Arizona state court proceeding was conducted, resulting in a coerced and involuntary entry of the final decree of dissolution by default, deprived the Plaintiffs of a full and fair opportunity to be heard on all claims adjudicated on March 14, 1995, and resulted in the taking and transfer of accounts in the custody and possession of Defendant financial institutions and titled in the name of the Plaintiffs by denying them an opportunity to be heard. Furthermore, Plaintiffs, Shawn D. Catz and Jason A. Catz, were never named or joined as parties in the Arizona proceeding, served with a summons and complaint, a temporary restraining order, or the final judgment awarding assets titled to them to Defendant Chalker.

IV.

CLAIM FOR RELIEF

DECLARATORY JUDGMENT 28 U.S.C. § 2201

15. Plaintiffs hereby incorporate all paragraphs herein as though fully set forth at length.

16. Plaintiffs' claims are controversies between the parties over which this Court has subject matter, personal, and *in rem* jurisdiction.

17. The Arizona state court judgment was entered in violation of the due process clause of the Fourteenth Amendment to the United States Constitution.

V.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court grant the following relief:

(a) Issue a final declaratory judgment, pursuant to 28 U.S.C. § 2201, that the Arizona state court judgment is invalid under 28 U.S.C. § 1738, Article IV, § 1 of the United States Constitution, and the due process clause of the Fourteenth Amendment to the United States Constitution, and issue corresponding final injunctive relief, pursuant to Rule 65 of the Federal Rules of Civil Procedure permanently enjoining Defendant financial institutions from transferring accounts in their custody and possession and titled in the name of the Plaintiffs.

(b) Award the Plaintiffs their costs and fees herein.

Respectfully submitted,

RAY & HOUSCH

By: /s/ Charles R. Ray

CHARLES R. RAY (#3188)
211 Third Avenue North
P.O. Box 198288
Nashville, TN 37219
(615) 256-2111

Attorney for Plaintiffs

EXHIBIT "A"

IN THE COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
CUYAHOGA COUNTY, OHIO

ROBERT S. CATZ, Plaintiff	)	CASE NUMBER: D 191073
	)	JUDGE STANLEY M. FISHER
vs.	)	JUDGMENT ENTRY
SUSAN R. CATZ, Defendant	)	

This case came on for Trial on April 18, 1989 before the Honorable Stanley M. Fisher. The hearing was conducted upon the Complaint for Divorce of the Plaintiff, the Defendant being in default of answer. Both parties were duly served with process according to law. Plaintiff presented evidence, corroborated by a witness, relative to the averments contained in his Complaint for Divorce.

Upon due consideration of the Complaint for Divorce and the evidence presented at the time of the Trial, this Honorable Court finds that: Plaintiff was a resident of Cuyahoga County Ohio, for a continuous period in excess of six (6) months immediately preceding the filing of his Complaint for Divorce the parties were married as alleged in Washington, D.C. on April 13, 1980; and, one (1) child was born as issue of the marriage, namely Aaron Catz, age eight (8).

This Honorable Court further finds that Plaintiff and Defendant have lived separate and apart without cohabitation for a period of time in excess of one (1) year, thereby entitling Plaintiff as to an absolute divorce.

This Honorable Court further finds that: the parties did not own real property in the State of Ohio which constitutes marital assets; the parties have not established any joint residence in the State of Ohio; the parties have not intermingled personal, tangible and/or intangible property since the time of their marriage; Plaintiff has taken possession of only his personal property located in the State of Ohio, which consists of clothing, toiletries, books, files and other supplies that are inherent in the practice of his profession; and, Defendant has in her possession her personal property.

This Honorable Court further finds that: according to Ohio Revised Code Section 3109.23, this Court does not have jurisdiction to determine custody and visitation rights regarding the child of this marriage because the child has no significant connection with the State of Ohio and has been residing with his mother in the State of Florida, thereby creating jurisdiction in the State of Florida; this Court is not the proper forum to determine matters of child support because the appearance of the defaulting Defendant is necessary to the just adjudication of the issue; and, the forum state exercising jurisdiction over the child of this marriage should apply its own substantive law related to support.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. Plaintiff is hereby granted a divorce from Defendant and the marriage contract heretofore existing between the parties is hereby dissolved and set aside;

2. Neither party is entitled to alimony;

3. Plaintiff shall retain possession of and have sole and exclusive rights to his personal property located in the State of Ohio;

4. Defendant shall retain possession of and have sole and exclusive rights to her personal property which is presently in her possession; and,

5. Plaintiff shall pay the costs of this proceeding for which judgment is rendered and execution may issue.

/s/ Stanley M. Fisher
JUDGE STANLEY M. FISHER

EXHIBIT "B"

Annette Everlove, Esq.
BUTLER & STEIN, P.C.
110 South Church Ave.
Suite 9300
Tucson, Arizona 85701
(602) 628-1618
Pima County Computer No. 17238

and

Leonard I. Karp, Esq.
KARP & WEISS, P.C.
33 N. Stone Avenue
Suite 1800
Tucson, Arizona 85701-1415
Pima County Computer No. 30244

Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

In re the Marriage of: SUSAN RUTH CHALKER, Petitioner, and ROBERT STEVEN CATZ, et al. Respondent.	NO. D-103065 **TEMPORARY RESTRAINING ORDER WITHOUT NOTICE** (Filed Dec. 1, 1994)

It clearly appearing from the specific facts shown by Petitioner's verified Amended Petition for Dissolution and the affidavits submitted in support of Petitioner's Application for Temporary Restraining Order on file in this proceeding that immediate and irreparable injury will result to the moving party if no order is issued before the time for responding has elapsed and before the adverse party or his attorneys can be heard in opposition. One of the applicant's attorney having certified to the Court in writing the reasons supporting the claim that notice should not be required and it appearing to the Court that the injury defined is irreparable because absent a temporary restraining order prohibiting the payment, withdrawal or disbursement of funds, stocks or other property from: who has been added as an additional party, Respondent will remove assets belonging to the community or in which the community has an interest from the Court's jurisdiction, or take other action violative of A.R.S. § 25-315.

IT IS THEREFORE ORDERED that, is enjoined from the payment, withdrawal and/or disbursement, in any manner whatsoever, of any funds, stocks, bonds, notes or other property which it has in its possession and/or control and titled in the names of ROBERT STEVEN CATZ, DOB: SSN: SUSAN RUTH CHALKER, DOB: SSN: , and/or Respondent's children, SHAWN DAVID CATZ (DOB: SSN:); and/or JASON ALAN CATZ (DOB:), SSN:); and/or AARON MICHAEL CATZ (DOB: SSN:);

IT IS FURTHER ORDERED that this Order be filed forthwith in the office of the Clerk of the Superior Court and entered of record and that the moving party serve a copy of this Temporary Restraining Order, the First Amended Petition for Dissolution of Marriage, the Ex Parte Motion to Add Parties and for Issuance of Temporary Restraining Order Without Notice, and the supporting affidavits forthwith upon any party to whom this order is directed and upon any other party or attorney who has appeared in this action in accordance with Rule 5, Arizona Rules of Civil Procedure.

This Order shall issue without bond and shall continue in force and effect until further order of the Court.

DATED this 1 day of Dec., 1994.

/s/ MICHAEL D. ALFRED
Judge
Pima County Superior Court

EXHIBIT "C"

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and

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Pima County Computer No. 30244

Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

In re the Marriage of: SUSAN RUTH CHALKER, Petitioner, and ROBERT STEVEN CATZ, Respondent, Additional Parties.	NO. D-103065 DECREE OF DISSOLUTION OF MARRIAGE Assigned to: Judge McDonald (Filed Mar. 14, 1995)

This matter coming on regularly to be heard before the Court on March 14, 1995, and Petitioner being present in person and through her attorneys, Annette Everlove and Leonard Karp; the Respondent not appearing; this Court having acquired jurisdiction over the Respondent on December 14, 1994 by personal service upon him of the Amended Petition for Dissolution, Summons, Preliminary Injunction, and other pleadings, all as set forth in that certain Affidavit of Return of Service dated December 15, 1994; Respondent not having responded to Petitioner's Request for Production of Documents served upon him on December 14, 1994; Respondent not having answered Uniform Domestic Relations Interrogatories served upon him on December 14, 1994; Respondent failing to attend his deposition duces tecum scheduled for February 9, 1995; Respondent failing to obey this Court's Minute Entry Order dated February 6, 1995, and having been found in contempt of Court, all as set forth in this Court's Minute Entry Order dated March 2, 1995, and default against Respondent having been entered and evidence having been presented and considered, the Court finds as follows:

1. Petitioner and Respondent were domiciled in the State of Arizona for at least ninety days prior to the filing of the Petition for Dissolution of Marriage.

2. Any judgment on the divorce purportedly heretofore obtained by Respondent against Petitioner in the State of Ohio, County of Cuyahoga, is null and void having been fraudulently obtained and further this Court shall not give full faith and credit to said judgment.

3. The conciliation provisions of A.R.S. § 25-381, as amended, either do not apply or have been met.

4. The marriage of the parties is irretrievably broken with no reasonable prospect of reconciliation.

5. There is one minor child the issue of this marriage, to wit: Aaron Michael Catz, date of birth October 15, 1980.

6. To the extent it has jurisdiction to do so, this Court has considered, approved and made provision for the custody and support of the parties' minor child, maintenance and support of the parties, division of community and other joint or common debts, obligations and property of the parties.

7. Petitioner shall have sole legal and physical custody of the parties' minor child with such visitation in Respondent as Petitioner, in her sole discretion, deems appropriate.

8. Respondent has been employed as a professor of law from 1979 until approximately 1993, first at Cleveland Marshall School of Law and later at District of Columbia School of Law, and the Court attributes income to him based upon income earning ability of $73,000.00 per annum.

9. Petitioner shall be entitled to an award of child support pursuant to Arizona Child Support Guidelines as set forth in the Child Support Order and Order of Assignment submitted herewith and signed by the Court this date. Said child support award shall be effective January 1, 1995 with no offset Respondent for any sums paid to date.

10. Petitioner satisfies the statutory requirements of A.R.S. § 25-319(A) and is in need of, and entitled to, an award of spousal maintenance, in that Petitioner lacks sufficient property, including property awarded herein, to provide for her reasonable needs and has, at Respondent's urging, become a contract elementary school teacher with no tenure, nor tenure possibility with her present employer.

11. During the pendency of these proceedings, Petitioner sustained an insurable loss on her automobile in the sum of $4,800.00 which Respondent's conduct has precluded Petitioner from collecting.

12. Respondent has secreted, dissipated and/or otherwise failed to account for substantial community funds and assets.

13. The terms of this Decree and fair and equitable given the Court's finding of Respondent's dissipation, secreting and/or failure to account for marital assets.

NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The marriage previously existing between the parties is dissolved.

2. Petitioner shall have sole legal and physical custody of the parties' minor child, Aaron Michael Catz, with such visitation in Respondent as Petitioner, in her sole discretion deems appropriate.

3. Respondent shall pay to Petitioner as and for child support the sum of $700.00 per month commencing January 1, 1995 pursuant to the Child Support Order signed this date.

4. Petitioner shall be entitled to claim Aaron as a dependent for income tax purposes for tax year 1994 and all years subsequent thereto.

5. Respondent shall pay to Petitioner as and for spousal maintenance the sum of $1,000.00 per month commencing January 1, 1995.

6. Petitioner is awarded as her sole and separate property all right, title and interest in and to the following investments, bank and/or retirement accounts:

A. Fidelity Latin American Fund (7,926.390 shares valued at $92,659.49 as of January 17, 1995);

B. Fidelity Southeast Asia Fund (15,644.564 shares valued at $186,639.64 as of January 17, 1995);

C. Fidelity U.S. Government Reserves (balance unknown);

D. Waterhouse Securities, Inc., account no. 301-10632 (approximate value as of February 22, 1995 – $120.00);

E. Waterhouse Securities, Inc., IRA-SEP account No. 301-10633 (approximate value as of February 22, 1995 - $1,410.00);

F. Waterhouse Securities, Inc., IRA account no. 301-10634 (approximate value as of February 22, 1995 - $13,529.00);

G. CREF Retirement Annuity, certificate number Q866023-8, Global Equities Account (approximate value $10,116.71);

H. CREF Supplemental Requirement Annuities, certificate no. J091114-7, Global Equities Account (approximate value $424,055.24);

I. TIAA Transfer Payout Annuity, contract no. IE42653-2 (approximate value $36,654.54);

J. Petitioner's State of Arizona Retirement (approximate value $ 230.00);

K. Petitioner's automobile 1989 Honda Accord;

L. All personal property in Petitioner's possession;

M. All bank accounts standing in Petitioner's name;

N. All bank accounts standing in Aaron's name.

7. As to those items set forth in ¶ 6 (G), (H) and (I) above, all right, title and interest shall be transferred to Petitioner by a Qualified Domestic Relations Order. The Court retains jurisdiction to enter such other QDRO's or other orders as are necessary to assure transfer to Petitioner of the property awarded to her hereunder.

8. Respondent is awarded all right, title and interest in and to his pension and/or retirement plan through the State of Ohio, current balance unknown.

9. The Court retains jurisdiction pursuant to A.R.S. § 25-318(B) to divide additional marital property which remains unknown by Petitioner and undisclosed by Respondent.

10. Respondent shall pay and hold Petitioner harmless from all debts of any kind or nature incurred by the

parties during marriage, including all tax liability, whether incurred in his name, Petitioner's name or both names except for the following;

A. loan from Bernice Mennis to Susan Chalker in the principal sum of $7,300.00;

B. those certain credit card debts set forth in Petitioner's spousal affidavit dated November 4, 1994.

11. Judgment is entered in favor of Petitioner and against the Respondent in the sum of $4,800.00 as and for the insurable loss on her automobile, which Respondent's conduct has precluded her from collecting.

12. Judgment is hereby entered in favor of Petitioner and against the Respondent for child support and spousal maintenance accrued from January 1 to March 1, 1995 in the sum of $3,000.00.

13. Petitioner is entitled to payment of her attorneys' fees and costs incurred in this matter and judgment thereon shall be entered by this Court by separate judgment or order upon filing by counsel for Petitioner of appropriate affidavits pursuant to *China Doll Restaurant Inc. v. Schweiger.*

14. Interest shall run on all monies adjudged to be owing Petitioner from Respondent at the legal rate of interest from entry of judgment until paid in full.

DONE IN OPEN COURT this 14 day of March, 1995, at 10 A.M.

/s/ Joseph R. McDonald
Honorable Joseph R. McDonald
Pima County Superior Court

STATE OF ARIZONA) ss.
COUNTY OF PIMA)

The foregoing instrument is a full, true, and correct copy of the original on file in this office.

Attested MAR 14 1995
JAMES N. CORRETT, Clerk

By /s/ Ruben R. Suares
Deputy
Ruben R. Suares

APPENDIX 4

ARIZONA SUPERIOR COURT, PIMA COUNTY

JUDGE PROTEM:
HON. JOSEPH R. MCDONALD CASE NO. **D - 103065**

COURT REPORTER:
Gladys Johnson DATE: October 20, 1995

IN RE THE MARRIAGE OF:

SUSAN RUTH CHALKER
Petitioner

and

ROBERT STEVEN CATZ
Respondent

Annette Everlove and
Leonard Karp
Petitioner's
Attorneys

Michael Rusing for
TIAA/CREF

MINUTE ENTRY

PETITIONER'S OSC:

Petitioner is present; respondent is not present.

Ms. Everlove argues her motion to the Court.

Mr. Rusing objects and argues to the Court. Further, Mr. Rusing argues against petitioner's request for attorney's fees.

This matter is taken UNDER ADVISEMENT.

cc: Hon. Joseph R. McDonald
Domestic Calendaring
Annette Everlove, Atty
Michael Rusing, Esq.
Under Advisement Clerk

Beth Hoover
Deputy Clerk

APPENDIX 5

Annette Everlove, Esq.
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110 South Church Ave.
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Pima County Computer No. 17238

and

Leonard Karp, Esq.
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(602) 882-9705
Pima County Computer No. 30244

Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

In re the Marriage of:	NO. D-103065
SUSAN RUTH CHALKER, Petitioner,	NOTICE OF ENTRY OF DISMISSAL
and	
ROBERT STEVEN CATZ, Respondent, Additional Parties.	Assigned to: Judge McDonald

Petitioner, SUSAN RUTH CHALKER, hereby advises the Court that that certain action pending in the United States District Court for the Middle District of Tennessee, Nashville Division, Cause No. 3:95-0947, in which Robert Steven Catz, et al. are Plaintiffs and Susan Ruth Chalker, et al. are Defendants, has been dismissed by Order of the Court, the Honorable Robert L. Echols, entered February 7, 1996, a true and correct copy of said Order is attached hereto, in addition to the dismissal of the Complaint in the above-described United States District Court action, all other requests for relief by the Plaintiffs in the Tennessee action have likewise been dismissed.

Petitioner SUSAN RUTH CHALKER therefore requests that this Court rule on her Petition on Order to Show Cause filed on August 29, 1995 and taken under advisement following hearing on October 16, 1996.

RESPECTFULLY SUBMITTED this 9th day of February, 1996.

BUTLER & STEIN, P.C.

/s/ Annette Everlove
Annette Everlove
Attorneys for Petitioner

COPY of the foregoing
mailed this 9th day of
February, 1996 to:

Tom Slutes, Esq.
SLUTES, SAKRISON, EVEN, GRANT
& PELANDER, P.C.
33 N. Stone Ave. #1100
Tucson, Arizona 85701-1489
Attorneys for Additional Party FIDELITY

Michael J. Rusing, Esq.
RUSING & LOPEZ, P.L.L.C.
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Attorneys for Additional Party TIAA/CREF

Mr. Robert S. Catz
c/o Shawn D Catz
1402 - 17th Ave. #B
Nashville, TN 37212
Respondent

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

SHAWN D. CATZ, et al.,	)	
	)	
Plaintiffs,	)	No. 3-95-0947
v.	)	JUDGE ECHOLS
SUSAN R. CHALKER, et al.,	)	
	)	
Defendants.	)	

ORDER

Presently pending before the Court is Defendant Susan Chalker's Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Lack of Personal Jurisdiction (Docket Entry No. 14), to which Plaintiffs have responded in opposition. For the reasons outlined in the Memorandum contemporaneously entered herewith, Defendant's Motion to Dismiss is hereby GRANTED. Also pending

are Plaintiffs' Motion for Preliminary Injunction (Docket Entry No. 3) and Plaintiffs' Motion Requesting Interpleader Fidelity to Deposit Bond in Registry of Court in Lieu of Cash Deposit (Docket Entry No. 17). The Court held a hearing on Plaintiff's Motions for Preliminary Injunction and Interpleader action for over two days. The Court's decision on the Motions for Preliminary Injunction and Interpleader was reserved until its consideration of Defendant's Motion challenging the jurisdiction of the Court. All of these motions were discussed in some fashion at the hearing. Plaintiff also has filed a Motion for Oral Argument on Defendant's Motion to Dismiss (Docket Entry No. 35) and Defendant has filed a Motion to Dismiss Plaintiff's Amended Complaint (Docket Entry No. 43). By virtue of the Court's ruling on Defendant's Motion to Dismiss for lack of subject matter jurisdiction, these Motions are hereby DENIED as MOOT.

It is so ORDERED.

/s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES
DISTRICT JUDGE

APPENDIX 6

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110 South Church Ave.
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and

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Co-Counsel for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

In re the Marriage of: SUSAN RUTH CHALKER, Petitioner, and ROBERT STEVEN CATZ, Respondent, Additional Parties.	NO. D-103065 **ORDER** Assigned to: Judge McDonald

This matter having come before the Court of Petitioner Susan R. Chalker's Petition for Order to Show Cause against TIAA/CREF with hearing thereon held on October 16, 1995; and this matter having been stayed by

the United States District Court for the Middle District of Tennessee, Nashville Division, Cause No. 3:95-0947, on or about October 19, 1995; and said Tennessee matter having been dismissed in its entirety by order dated February 7, 1996, the Honorable Robert L. Echols; and good cause appearing, the Court finds as follows:

1. That all right, title and interest in the TIAA/CREF accounts listed below was ordered to be transferred to SUSAN RUTH CHALKER pursuant to the Decree of Dissolution of Marriage entered by this Court on March 14, 1995:

a. CREF Retirement Annuity, Certificate No. Q866023-8, Global Equities Account;

b. CREF Supplemental Retirement Annuities, Certificate No. J091114-7, Global Equities Account;

c. TIAA Transfer Payout Annuity, Contract No. IE42653-2.

2. That pursuant to said Decree of Dissolution of Marriage, a Qualified Domestic Relations Order was entered by this Court on July 28, 1995, awarding to Petitioner as her sole, separate and exclusive property the above-referenced TIAA-CREF accounts.

3. That to date, these accounts have not been transferred.

4. That no good cause exists for the failure to transfer said accounts and/or annuities.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

That TIAA/CREF honor the Qualified Domestic Relations Order entered by this Court on July 28, 1995 and immediately transfer the above-listed TIAA/CREF accounts and/or annuities to SUSAN RUTH CHALKER.

Petitioner's request for attorneys' fees and costs incurred in bringing the instant Petition for Order to Show Cause is denied.

DONE IN OPEN COURT this 13 day of February, 1996.

/s/ Illegible for JR McDonald
Honorable Joseph R.
McDonald
Pima County Superior Court

Copy of the foregoing mailed
this 13th day of February,
1996 to:

Tom Slutes, Esq.
SLUTES, SAKRISON, EVEN, GRANT
& PELANDER, P.C.
33 N. Stone Ave. #1100
Tucson, Arizona 85701-1489
Attorneys for Additional Party FIDELITY

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Attorneys for Additional Party TIAA/CREF

Mr. Robert S. Catz
c/o Shawn D Catz
1402 - 17th Ave. #B
Nashville, TN 37212
Respondent

APPENDIX 7

TEACHERS INSURANCE AND
ANNUITY ASSOCIATION OF AMERICA
COLLEGE RETIREMENT EQUITIES FUND
730 Third Avenue, New York, New York 10017

Contracts issued to:
Susan R. Chalker

To accommodate the Marital Property Agreement between Robert S. Catz and Susan R. Chalker, dated February 13, 1996, and in accordance with their Court Order:

1. 100% of the then commuted value as of July 28, 1995 under TPA Contract No. IE42653-2 (issued February 1, 1994), amounting to $37,740.96 (with a then equivalent annuity payment of $5,620.35) has been withdrawn as of July 28, 1995 and applied to TIAA TPA Contract No. ID06176-9 on the life of Susan R. Chalker, and

2. 100% of the accumulation of the Money Market Account under CREF Certificate No. Q866023-8, as of July 28, 1995, amounting to 682.817 units valued at $15.8333 each, equivalent to a dollar amount of $10,811.25,** has been withdrawn and applied to the Money Market Account under CREF Certificate No. U503706-6 on the life of Susan R. Chalker, and

3. 100% of the accumulation of the Global Equities Account under CREF Certificate No. Q866023-6, as of July 28, 1995, amounting to 128.584 units Valued at $44.0693 each, equivalent to a dollar amount of $5,666.61,** has been withdrawn and applied to the

Global Equities Account under CREF Certificate No. U503706-6 on the life of Susan R. Chalker, and

4. 100% of the accumulation of the Money Market Account under CREF SRA Certificate No. J091114-7, as of July 28, 1995, amounting to 28,621.195 units valued at $15.3023, equivalent to a dollar amount of $437.970.11,** has been withdrawn and applied to the Money Market Account under CREF SRA Certificate No. J447488-6 on the life of Susan R. Chalker.

RECORDED – TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA COLLEGE RETIREMENT EQUITIES FUND

March 20, 1996 (Date) BY GAYTHA GULBRANDSEN (Registrar)

* This amount does not reflect the interest and dividends accrued to date.

** This amount does not reflect market value changes up or down plus dividends accrued on the amount withdrawn after the above-noted date of the division.

Supreme Court, U.S.
FILED
APR 4 1997
OFFICE OF THE CLERK

No. 96-1354

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1996

ROBERT S. CATZ,

Petitioner,

v.

TRIAL COMMISSIONER JOSEPH R. McDONALD, DOMESTIC RELATIONS DIVISION OF THE SUPERIOR COURT IN AND FOR THE COUNTY OF PIMA, ARIZONA, SUSAN R. CHALKER (Real Party of Interest), FIDELITY INVESTMENTS, TEACHERS INSURANCE ANNUITY ASSOCIATION-COLLEGE RETIREMENT EQUITY FUND, AND WATERHOUSE SECURITIES, INC.

Respondents.

Petition for Writ of Certiorari to the Arizona Court of Appeals, Division Two

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PETITIONER'S REPLY MEMORANDUM

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This petition raises important constitutional issues regarding the arbitrary and impermissible exercise of state judicial power and the fundamental and historical right to defend deeply rooted at common law and in the Due Process Clause of the 14th Amendment. That right undeniably includes the opportunity to defend before an impartial judicial officer. Ward v. Monroeville, 409 U.S. 57, 61-62(1972); In re Murchison, 349 U.S. 133 (1955); Tumey v. Ohio, 273 U.S. 510(1927).

On January 10, 1995 the chief judge of the Arizona divorce court re-assigned this case from himself to respondent trial commissioner McDonald. On March 14, 1995 respondent McDonald entered final judgment by default as a sanction for contempt without *any* prior notice to the petitioner.(App. 36-46) On May 5, 1995 respondent Chalker's divorce lawyer Leonard Karp filed an affidavit for an award of attorneys fees. The affidavit disclosed for the first time on the record of the divorce court proceedings that Mr. Karp had met privately with the chief judge of the domestic relations division on December 16, 1994, the very morning that the chief judge abruptly cancelled sua sponte the emergency hearing scheduled before respondent McDonald (R.106), and that counsel was serving as a judge pro tempore of the divorce court since 1985. (R.191)

If these belated disclosures were not enough, the Arizona divorce court record establishes that after reassignment of this case to respondent McDonald, neither of respondent Chalker's several divorce lawyers nor respondent trial commissioner McDonald *ever* dis-

closed to petitioner that immediately prior to assuming judicial office, respondent McDonald and respondent Chalker's counsel Leonard Karp were name partners in the Tucson, Arizona law firm of Karp, Stolkin,Weiss & McDonald, P.C. See, MARTINDALE-HUBBELL, Vol. I at page 526B (1988) (law firm biography).

In addition to the pervasive due process irregularities that occurred in the Arizona proceedings as fully developed in our petition, on January 16, 1996 respondent McDonald awarded respondent Chalker's divorce lawyers $43,308.93 in attorneys fees. The fees were awarded to two law firms for work performed in a case that resulted in the "prompt" and "expeditious" entry of a default judgment in which pro se petitioner was denied any and all opportunity to be heard and to offer any kind of significant resistance to "draconian" litigation tactics designed not in furtherance of the truth but to marginalize an adversary premptively and unconstitutionally stripped of all his financial resources, and those of his non-party adult children, resources necessary to mount any kind of meaningful defense.

From these facts, a detached and neutral observer could reasonably infer, given the totality of the record of the"shocking" and "draconian"(App. 12) Arizona divorce proceedings, that petitioner was denied a full and fair opportunity to be heard before an impartial and neutral tribunal, one which would allow him some momentary opportunity to defend before final adjudication of fraud allegations. The odious finding of fraud clearly unsupported by any syntilla of clear and convincing

evidence, the standard of proof that must be applied even in a summary proceeding under the law of the rendering State of Ohio required by Article IV § 1 that petitioner engaged in fraud in the Ohio divorce proceedings (App. 42), while an officer of the Supreme Court of Ohio and this Court, was entered by respondent McDonald without the slightest consideration given to the attendant collateral consequences of a adjudication by default that petitioner was guilty of conduct unbecoming a member of the bar violates due process. See, Sup.Ct. Rule 8.1-8.2

The Court has consistently held "that the right to an impartial decision-maker is required by due process in every case." Arnett v. Kennedy, 416 U.S. 134, 197 (1974). Indeed, the "appearance of even handed justice . . . is at the core of due process." Mayberry v. Pennsylvania, 400 U.S. 455, 469(1971). And, due process requires recusal of decision-makers who may" have no actual bias," if they might reasonably appear to be biased." Morrisey v. Brewer, 408 U.S. 471, 485 (1972); Goldberg v. Kelley, 397 U.S. 254, 271(1971).

The right to fair and impartial court proceedings is fundamental to litigants; fundamental to the judiciary is the public's confidence in the impartiality of our judges and the proceedings over which they preside. "Justice must satisfy the appearance of justice." In re Murchison, 349 U.S. at 136. Here, no disclosure was made to petitioner by Mr. Karp, a judge pro tempore of the divorce court, nor by respondent McDonald that they had been law partners. The courts have repeatedly

placed great importance on an impartial judiciary: "[o]ne of the fundamental rights of a litigant under our judicial system is that he is entitled to a fair trial in a fair tribunal, and that fairness requires an absence of bias or prejudice in the trial of the case." United States v. Wade, 931 F.2d 300, 304(5th Cir. 1976). In Liljeberg v. Health Services Acquisition Co., 486 U.S. 847, 860-61(1988) the Court stated the standard for disqualification of a judge is "whether a reasonable and objective person, knowing all the facts, would harbor doubts concerning the judge's impartiality." (Emphasis added) "Knowing all the facts" is vital when assessing whether disqualification should be sought. And disqualification for lack of impartiality can only be fairly assessed by a party-litigant when full disclosure is made on the record regarding a judge's past and present professional, familial, business affliations and personal relationships with the parties and those members of the bar that regularly appear before the divorce court.

Contrary to the respondent's assertion in her opposition, the extreme and "shocking" due process departure from established modes of procedure by the Arizona divorce court was argued extensively to the Arizona Court of Appeals and the Arizona Supreme Court where petitioner unambigously sought special action mandamus relief from the judgment in order to restore the rule of law "spoken with the voice of the Due Process Clause of the 14th Amendment" to enforce unambigous "rights protected in a long line of unbroken

cases decided by the Court in Sniadach v. Family Finance , 395 U.S. 337 (1969); Fuentes v. Shevin, 407 U.S. 67 (1972); Mitchell v. W.T. Grant, 416 U.S. 600 (1974); North Georgia Finance Co. v. Di-Chem, 419 U.S. 922 (1975)." (R. 23-24)

Finally, the larger due process question presented here subsumes claims under Article IV § 1 as the Arizona divorce court in the default judgment evidentiary hearing improperly declined to give the 1989 Ohio divorce decree full faith and credit under Article IV § 1 by failing to apply the evidentiary standard of proof required by the law of the rendering state of Ohio whenever a party collaterally attacks a prior judgment on grounds of fraud, nor did the Arizona divorce court in rendering final judgment by default ever examine or receive into evidence an authenticated copy of the record of Ohio proceedings as required by 28 U.S.C. § 1738. On March 24, 1997 the Court granted certiorari in Baker v. General Motors Co. No. 96-653 to consider the propriety of a federal court sitting in diversity declining to give a Michigan decree full faith and credit on Missouri state policy grounds. In light of this development, the Court may deem it appropriate to defer consideration of this petition until a decision in Baker.

Respectfully submitted,

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